

IN THE MATTER OF ACADEMY CHILD	*	
DEVELOPMENT CENTER, INC.	*	
Petitioner	*	
Marilyn Fleetwood	*	
Sharon Heselden	*	
Carl Starkey	*	
Michael Norton	*	
For the Petitioner	*	Board of Appeals No. S-2726
<u>Debra S. Borden, Esquire</u>	*	(OZAH Referral No. 08-24)
<u>Emily J. Vaias, Esquire</u>	*	Board of Appeals No. S-2453-A
Attorneys for the Petitioner	*	(OZAH Referral No. 08-23)
*****	*	
<u>Martin Klauber, Esquire</u> , People's Counsel	*	
In Support of the Petitions	*	
*****	*	
Schain Lolatchy	*	
Opposed to the Petitions	*	
*****	*	
Before: Martin L. Grossman, Hearing Examiner		

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I. STATEMENT OF THE CASE

On February 7, 2008, Petitioner, Academy Child Development Center, Inc.,¹ filed Petition S-2453-A to modify an existing Day Care special exception (Exhibit 33) by increasing day care enrollment from 88 to 118, and Petition S-2726 for a new Private Educational Institution special exception to allow a private school for up to 40 first and second grade students.² The total number of children enrolled and on site at any one time would not exceed 130, and staff on site would be increased from 19 to 31. The special exceptions sought are regulated by Zoning Ordinance Sections 59-G-2.13.1 (Child Day Care Facility) and 59-G-2.19 (Educational Institutions, Private).

The property is located at 10107 Darnestown Road, Rockville, Maryland (Tax Account No. 09-03398712) and contains approximately 1.5 acres.³ The property is owned by RLL&C Corporation⁴ and leased to Petitioner (Exhibit 11). It is zoned R-90, and has been operating at this location since 2001, providing child-care services. The original site of the Child Day Care Center, 10109 Darnestown Road, is described as Lot 1, Block A, “Travilah Heights.” The proposed special exception site would combine the original site with adjacent Parcel 60 (10105 Darnestown Road) by subdivision, to allow for the expanded operations.⁵

¹ Petitioner is a non-profit corporation, pursuant to Section 501(c)(3) of the Internal Revenue Code. Ex. 21(a), p. 2.

² Kindergarten is already included as part of the existing Child Day Care special exception. Though not expressly mentioned in the Board of Appeals Opinion granting the original Special exception (S-2453, effective May 17, 2001 – Ex. 33), the inclusion of kindergarten is evident from the Statement in Support of the original special exception petition (Ex. 3, p. 3, in the original S-2453 file, of which the Hearing Examiner takes official notice). *See also*, Tr. 25-26 and 113. Zoning Ordinance §59-A-2, under the definition of “Child day care facility,” provides, “Preschool and kindergarten educational programs, subject to accreditation by the State, are permitted as an accessory use in all child care facilities.” Kindergarten is explicitly included in the Statement of Operations for the current petitions. Ex. 41(k).

³ The current petitions both specify 10107 Darnestown Road as the site address, but the original petition listed 10109 Darnestown Road as the address (Exhibit 33). Parcel 60 (10105 Darnestown Road) was later acquired by Petitioner (Tr. 18-19), and Petitioner’s lease lists both 10105 and 10109 Darnestown Road (Exhibit 11). The Maryland tax records specify only 10107 Darnestown Road as the site, and the Board of Appeals approved the change of address to 10107 Darnestown Road on February 24, 2004. Subdivision will be required in this case. Exhibit 28, p. 12.

⁴ RLL&C Corporation is owned by Marilyn Fleetwood, the Petitioner’s president, and her husband. Tr. 18-19.

⁵ Petitioner was using both lots without Board of Appeals authorization and was cited on December 6, 2006, by the

By letter dated April 23, 2008, Petitioner's next-door neighbor, Schain Lolatchy, stated his opposition to the petitions based on his concerns about noise, traffic, parking, early lawn maintenance and early trash pickups. Exhibit 22.⁶ Mr. Lolatchy runs a dance studio on his property as a major home occupation (S-2381) and also resides there.

Petitioner moved, by letters dated April 25, April 30 and June 11, 2008, to amend its petitions (Exhibits 21, 24 and 26), and those motions to amend the petitions were noticed on May 2, May 15 and June 17, 2008 (Exhibits 23, 25 and 27). The motions to amend were unopposed, and thus were thus automatically granted as specified in the notices.

On June 23, 2008, the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) filed its Report (Exhibit 28)⁷, which recommended approval of the petitions, with conditions which have been included in Part V of this report. Staff did not recommend approval of Petitioner's request to remove the "left turn out" restriction on trucks and busses leaving the site, because Staff felt that the issues related to that request should be addressed, with input from the Department of Transportation (DOT), at preliminary plan review.

The Montgomery County Planning Board reviewed this case on July 3, 2008, and unanimously recommended approval of both petitions. Exhibit 29. The Planning Board disagreed with Technical Staff's refusal to recommend removal of the "left turn out" restriction on trucks and busses leaving the site, because the record demonstrated safe sight distances for trucks and busses; however, since the sight distances are unsafe for passenger cars leaving the site, the Planning Board conditioned this recommendation on Petitioner implementing a monitoring plan to prevent

Department of Permitting Services (DPS) for doing so, along with other violations relating to staffing, landscaping, lighting, parking and signage (Exhibit 17).

⁶ The exhibits and their numbers are identical in the two files, S-2453-A and S-2726, and they are therefore referred to only by their exhibit numbers.

⁷ The Technical Staff Report, Exhibit 28, is frequently quoted and paraphrased herein.

passenger cars from making the same turning movement. The Planning Board also unanimously approved Petitioner's Preliminary Forest Conservation Plan. Exhibit 40.

The matter was noticed for a hearing to be held on July 11, 2008, (Exhibit 19(b)), and the hearing proceeded as scheduled. Petitioner called four witnesses; one opposition witness, Mr. Lolatchy, testified. The record was held open for revisions to plans resulting from the hearing and for the filing of additional materials by August 1, 2008, as requested by the Hearing Examiner. Other parties and Technical Staff were given until August 11 to comment on the new filings, and Petitioner was allowed until August 18 to respond. Petitioner timely filed the additional materials and revisions on August 1, 2008 (Exhibits 41 and 41(a) through (m)), and both Technical Staff (Exhibit 42) and Mr. Lolatchy (Exhibit 43) timely commented. Petitioner responded on August 15 (Exhibit 44), and Mr. Lolatchy replied on August 18 (Exhibit 45).

Unfortunately, Transportation Staff's comments were not timely forwarded to the Hearing Examiner, and the record had to be reopened to receive those comments and some final filings to address concerns raised by Mr. Lolatchy. *See* Exhibits 46 and 47. The Hearing Examiner thus reopened the record (Exhibit 49) to receive the additional materials and comments. On September 12, 2008, Petitioner filed a revised Transportation Management Plan (TMP), which increased the hours of monitoring, added monitoring to prevent unauthorized parking on Mr. Lolatchy's property and stiffened penalties for violations (Exhibit 53(a)). Petitioner also filed revised plans, in accordance with comments by Technical Staff, and copies of letters it sent to its lawn maintenance service and trash collection service to control their early hours (Exhibits 53(c) – (i)). No further substantive comments were received, and the record closed again on September 22, 2008.

One of the petitions in this case (S-2453-A) proposes a modification to an existing child day care special exception. The appropriate scope of the hearing on a petition for modification of a special exception is spelled out in Zoning Ordinance § 59-G-1.3(c)(4). That subsection

provides, in relevant part:

The public hearing must be limited to consideration of the proposed modifications noted in the Board's notice of public hearing and to (1) discussion of those aspects of the special exception use that are directly related to those proposals, and (2) as limited by paragraph (a) below, the underlying special exception, if the modification proposes an expansion of the total floor area of all structures or buildings by more than 25%, or 7,500 square feet, whichever is less.

The public notices in this case specified all the modifications proposed by Petitioner, as set forth in Part II. D, below. Because Petitioner's plans do not include expansion of the total floor area *by more than 25%, or 7,500 square feet*, the scope of the inquiry regarding that petition is limited by statute to "discussion of those aspects of the special exception use that are directly related to [the modification] proposals," and does not include a review of the "underlying special exception." Nevertheless, the changes proposed by the modification petition do require a review to insure that the noticed changes will comply with the controlling statutory provisions and will not have unduly adverse effects on the neighborhood. Moreover, its combination with a new special exception (S-2726) necessitates a complete review of the standards governing that petition for a private educational institution.

As will appear more fully below, the adjacent neighbor has raised some legitimate concerns, but they do not warrant denial of the subject petitions. They do warrant the imposition of special conditions and a Transportation Management Plan to limit any potentially adverse effects.

II. FACTUAL BACKGROUND

A. The Subject Property

The Academy Child Development Center property is located on the north side of Darnestown Road, just west of its intersection with Travilah Road. The existing site of the Child Day Care Center (Lot 1, Block A) measures 44,331 square feet, and adjacent Parcel 60 measures

21,165 square feet. Exhibit 41(i). The proposed special exception site would combine these to parcels by subdivision, to create a site of 1.503 acres (65,496 square feet), which will allow for the expanded operations. The site is zoned R-90 (residential, one-family), and its location can be seen on the following aerial photographs supplied by Petitioner (Exhibits 18(c) and (b)):





As reported by Technical Staff (Exhibit 28, p. 5),

The subject site contains an existing single-family house, an 8,277 square foot school building, a play area for the children and parking for staff. The single-family home is used as an office and residence for the president of Academy Child Development, LLC. The topography of the site is relatively flat with the lowest elevation nearest to Darnestown Road. Lot 1 of the site is well landscaped with evergreens, low shrubs and maple trees throughout. A six-foot solid board fence is constructed along the perimeter of the lot, with a 4-foot solid board fence towards the front, and adjacent to the dance studio's parking area along the exit-

only driveway. Parcel 60 contains a vacant single-family house, which is used to park the school's bus and to store miscellaneous supplies for the Academy.

The site is depicted in the following photographs appended to the Technical Staff report as Attachment 11.



Figure 1: Site looking from Darnestown Road, north. Existing buildings.



Figure 2: Existing day care center, 8,277 sq. ft. of building. Looking north from western driveway.



Figure 5: Existing House (to be demolished)



Figure 6: Rear of existing single-family house/administrative offices (to remain)

The caption in Figure 5, above, refers to the existing house on Parcel 60, which will be removed.

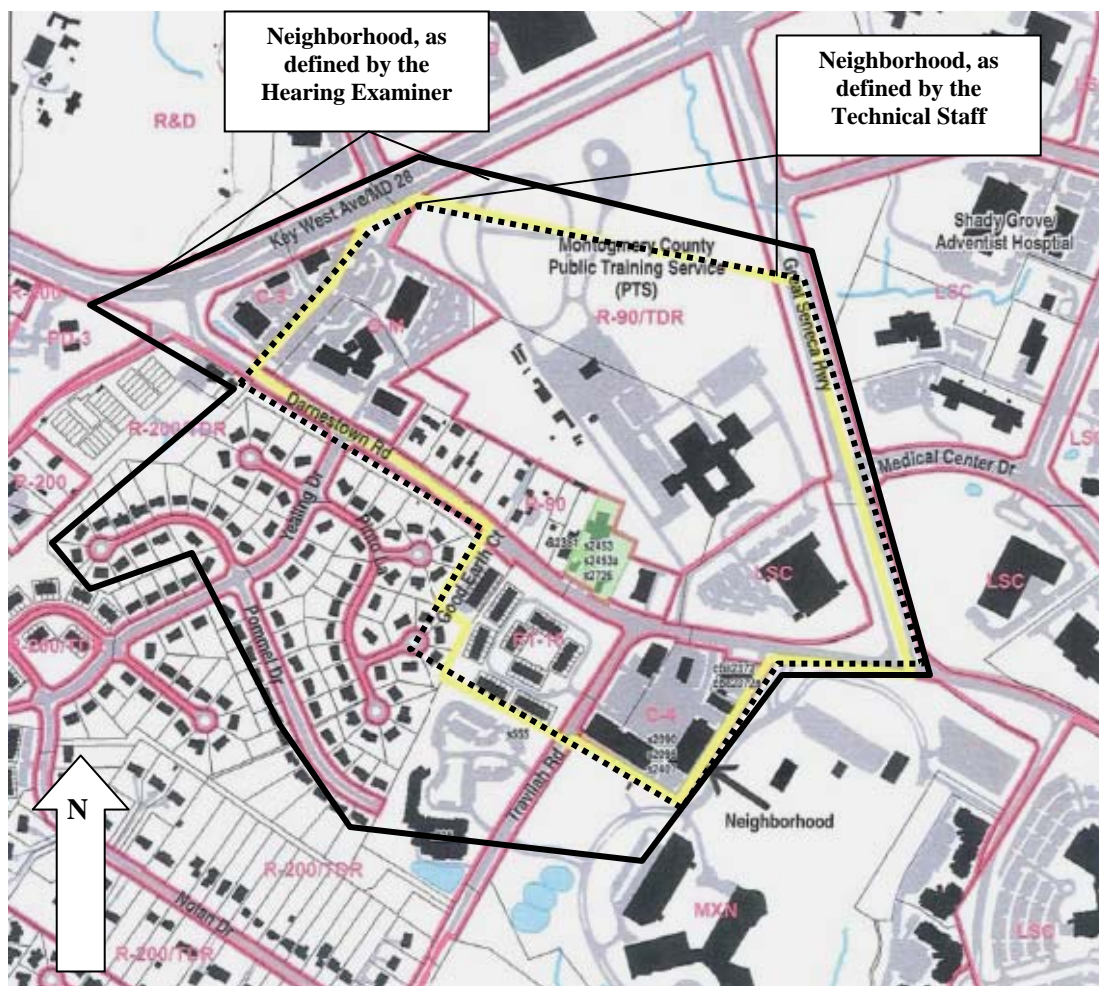
The existing house on Lot 1 will remain and continue to function as before.

Vehicular access has been provided by two driveways on Lot 1 and one on Parcel 60. All enter into Darnestown Road. After the modifications, only the two driveways on Lot 1 will remain.

The site is not within a Special Protection Area and has no areas of environmental buffer, streams, 100-year floodplains or wetlands. The property drains from the southwest to the northeast. Exhibit 28, p. 7.

B. The Neighborhood

Technical Staff proposed to define the neighborhood as bordered by “Route 28/Key West Avenue to the north and west, Great Seneca Highway to the east, and the Travilah Crest and Huntington Hills Woods subdivisions to the south.” Exhibit 28, p. 5. It is shown below (dotted line) on a Neighborhood Map appended to the Technical Staff report as Attachment 3A:



The Hearing Examiner finds this defined area to be too small because it does not include the neighborhood to the south of Darnestown Road which may well be affected by traffic produced by the increases in enrollment (Tr. 132-134); nor does it include the key intersection of Darnestown Road and Key West Avenue (MD 28). The Hearing Examiner's proposed neighborhood is drawn in on Technical Staff's map, above, as a solid line. It is bordered by Route 28/Key West Avenue to the north and west (including its intersection with Darnestown Road); the rear of the Montgomery County Public Training Service property to the north; Great Seneca Highway to the east, and Pommel Drive to the south. The Hearing Examiner raised this issue at the hearing (Tr. 8), and Petitioner did not object to the enlarged neighborhood definition. Tr. 167-168. The change does not affect the outcome of the case, but it more realistically defines those potentially affected by these petitions.

Adjacent to the subject site, on the west, is the residence and dance studio of the single opponent to these petitions, Schain Lolatchy (S-2381). Immediately to the north of the site is the Montgomery County Public Training Service. To the east is a PEPCO substation, and to the south, confronting the site across Darnestown Road, are the Travilah Crest and Huntington Hill Woods Subdivisions. The areas to the south and west of the site contain single and multi-family residential uses.

As noted by Technical Staff (Exhibit 28, p. 5):

Properties within the neighborhood are zoned R-90 (Residential, one-family), R-200/TDR (Residential, transferable development rights), RT-10 (Residential, townhouse), C-4 (Limited commercial), LSC (Life Sciences Center), O-M (Office building, moderate intensity) and MXN (Mixed-use neighborhood).

The Montgomery County Public Training Service (north of the site) is on land zoned R-90/TDR, and the property adjacent to Key West Avenue, just inside the western border of the Hearing Examiner's defined neighborhood, is zoned C-3 (Highway Commercial).

Other special exceptions in the neighborhood are listed in Attachment 3B to the Technical Staff report (Exhibit 28):

S-2381: Major Home Occupation (dance studio)

Address: 10111 Darnestown Road, Rockville
Parcel ID: 00775896
Approved: 06/02/1999 (effective date)

S-2090: Public Utility Building and structure (telecommunications)

Address: 10025 Darnestown Road, Rockville
Parcel ID: 02357408
Approved: 08/05/1994 (effective date)

S-2095: Trade, Artist or Technical School

Address: 10025 Darnestown Road, Rockville
Parcel ID: 02357408
Approved: 08/25/1994 (effective date)

S-2407: Co-location with existing telecommunication facility (see S-2090)

Address: 10025 Darnestown Road, Rockville
Parcel ID: 02357408
Approved: 11/22/1999 (effective date)

S-555: Horticultural Nursery & Commercial Greenhouse

Address: not available
Parcel ID: 00390606
Approved: 05/25/1997 (effective date)

S-825: Child Day Care Center

Address: 14330 Travilah Road, Rockville
Parcel ID: 00394318
Approved: 07/21/1982 (effective date)

CBA-2372: Automobile Filing Station

Address: 10010 Darnestown Road, Rockville
Parcel ID: 00052220
Approved: 05/14/1968

CBA-2372-A: Automobile Filing Station (modification)

Address: 10010 Darnestown Road, Rockville
Parcel ID: 00052220
Approved: 01/15/1987

C. The Master Plan

The subject site is located within the area covered by the 1990 Shady Grove Study Area Master Plan.⁸ The Master Plan discusses the subject site (as part of 23 acres of residential and employment uses fronting on Darnestown Road) in conjunction with the Public Service Training Academy (PSTA), now called the Montgomery County Public Training Service, immediately north of the site. Master Plan, pp. 67-68. The Plan considers the PSTA area to be “a critical element in the R&D employment ‘mainstreet’ concept. Along with the [nearby] Johns Hopkins University property, County-owned land at this locale will form the western ‘gateway’ into the R&D Village.” Master Plan, p. 67.

The Plan contemplates continued operation of the PSTA, and states that acquisition of the Darnestown Road frontage lots for public use should be considered due to their proximity to the PSTA. Alternatively, the Plan recommends designating the area as suitable for 8/unit per acre use to encourage coordinated development. More specifically, “For the frontage along Darnestown Road, assemblage of properties is encouraged to allow comprehensive redevelopment, served by a frontage road, in accord with the land use recommendations.” Master Plan, p. 68.

Nevertheless, the Master Plan supports the existing R-90 Base Zone for the subject property (Master Plan p. 76, figure 6.2), while it also recommends making the RT-8 Floating Zone an option (Master Plan p. 77, figure 6.3). Private educational institutions and child day care facilities are allowed by special exception in both the R-90 and the RT-8 zones, so it is fair to say that the proposed uses are consistent with the goals of the Master Plan.

Moreover, as pointed out by Technical Staff (Exhibit 28, p. 6 and Attachment 4), the

⁸ “Community-Based Planning staff states that the subject special exceptions will be within the boundaries of the ‘Gaithersburg West Master Plan,’ which is currently in the development process. . . . According to their memorandum, this master plan is anticipated to go before the Montgomery County Planning Board in the fall of 2008, and before the County Council in the winter of 2009.” Exhibit 28, p. 6.

Master Plan makes the following observations with respect to day care facilities:

- Recommends the provision of child day care facilities and housing for the elderly at appropriate locations in the Study Area (p. 6);
- Day care facilities, available in the residential neighborhoods as well as employment centers, attract young families with children (p 20);
- Encourage the provision of child day care facilities at appropriate locations in the Shady Grove Study Area (p. 120).

The Master Plan discusses child day care facilities and schools as among facilities which serve as “community magnets” to help provide a sense of community.” Master Plan, pp. 111-120.

The Plan notes (Master Plan, p. 120):

The number of working parents and the projected increase in the number of children of appropriate ages in the Shady Grove Study Area indicate a need for additional child day-care facilities and opportunities.

Based on this record, Technical Staff concluded that “both applications are consistent with the recommendations contained in the Master Plan for community facilities.” Exhibit 28, p. 9.

The Hearing Examiner agrees.

D. Proposed Modifications and New Use

1. The Current Use and History:

Academy Child Development Center, Inc. (hereinafter, “Academy”) was established in 1981 as a “501(c)(3),” not-for-profit, educational institution. There are five locations currently in Montgomery County. Four are located on the campuses of Montgomery County elementary schools. Currently, Petitioner offers services for children, ages two months to 12 years. Tr. 17.

On May 17, 2001 the Board of Appeals approved Special Exception S-2453, Petitioner’s original application for use of Lot 1 Block A, at 10109 Darnestown Road, Rockville, Maryland as a child day care facility. It was authorized to construct a one-story, 8,277 square-foot, building, and to use an existing single-family home for residential and office use in conjunction with the child care facility. The site also contained parking and an outdoor play area.

According to Petitioner's statement in support of the current application (Exhibit 21(a), p. 4), the Planning Board approved Preliminary Plan 1-01048 in December of 2001, which limited enrollment to 30 children before 9:30 a.m. and after 3:30 p.m., in order to satisfy a then-existing moratorium imposed by the former Policy Area Transportation Review (PATR) to limit peak-hour traffic in the area.

The Maryland State Department of Education has licensed and approved Petitioner for child care, by License No. 15-124205, dated August 5, 2003 (Exhibit 16). As explained in footnote 2 of this report, the child care special exception includes kindergarten. According to Petitioner's president, Marilyn Fleetwood, Petitioner is also approved for staff training for child care workers, and a couple of its centers are accredited through the National Association for the Education of Young Children. Tr. 17.

Petitioner commenced operations on Lot 1 in 2001, and has been operating the childcare facility ever since. As a general childcare facility, Academy has provided a full range of childcare services on a year-round basis. The existing child care special exception still includes the 8,277 square-foot building, located in the rear of Lot 1, which houses classrooms, play rooms and supporting facilities, as well as the single-family residence, which is used for administrative offices by Academy staff and as a second residence for Petitioner's president.

On August 7, 2002, the Board of Appeals approved an administrative modification of the special exception which removed the initial limitation of 30 children during peak traffic hours and authorized Academy to operate, with no peak hour limitations and with a maximum enrollment of 88 children.⁹ Technical Staff properly characterized that change as the most significant modification to date.¹⁰ Exhibit 28, pp. 3-4.

⁹ The Council had lifted the moratorium for free-standing child daycare centers, and the 2003-2005 Growth Policy- Policy Element abolished Policy Area Transportation Review (PATR).

Petitioner's request to expand enrollment from 88 to 124 by administrative modification was denied by the Board of Appeals in a resolution effective June 4, 2007 (contained in original file of S-2453) because more detailed analysis was needed than would occur with an administrative modification. Petitioner thereafter filed the subject petitions.

2. Proposed Changes:

Petitioner seeks approval of the subject petitions to allow its services to grow to meet the child care and educational needs of the surrounding community. Approval will also resolve citations for non-compliance with certain conditions of the special exception grant, as mentioned in footnote 5 of this report. The combined day care and school will operate under the trade name, "Academy Primary School and Child Development Center." Tr. 8-9.

Under the applications, Petitioner wishes to make the following changes and improvements, as summarized by Technical Staff (Exhibit 28, pp. 4-5):

- (1) Addition of the adjacent parcel, known as Parcel 60, to the gross lot area of the special exception;
- (2) Demolition of the existing house on Parcel 60;
- (3) A maximum of 130 children for the combined uses of Child Daycare and Private Educational Institution;
- (4) Construction of a[n 18 by 30 foot] pavilion (covered play area), parking and stormwater management facilities on Parcel 60;
- (5) A maximum of 31 employees working on various schedules;
- (6) Hours of operation: year round 6:30 A.M. to 6:30 P.M, Monday - Friday;
- (7) Parking: 55 spaces (52 standard, 3 handicapped spaces)

¹⁰ Other administrative modifications were described by Petitioner (Exhibit 21(a), pp. 4-5):

On April 9, 2002, the Board granted an administrative modification of the special exception to eliminate the clerestory and dormers shown on the original plan, and to eliminate the detached storage building and entry area in the rear of Lot 1 shown on Revised Exhibit 8 in the record of the case. On October 17, 2002, the Board granted an administrative modification of the special exception to allow relocation of the dumpster pad and the addition of a 2-ft. wide sidewalk along the one-way exit lane on the west side of Lot 1. This modification was consistent with comments received from Montgomery County Fire and Rescue Services. On February 24, 2004, the Board granted an administrative modification approving the new address of the facility as 10107 Darnestown Road, modifying landscaping on the site, altering the free-standing sign on Lot 1, altering the fencing materials used to enclose the property, reducing the number of light fixtures and changing the style of the building light fixtures.

- (8) Signs: One (1) free-standing signs, 5.6-feet in height and containing 13.194 square feet in area; and one (1) wall-mounted sign on the existing facility;
- (9) An internal vehicular connection between Parcel 60 and Lot 1;
- (10) Revision of the “right-out only” exit lane to exempt trucks and buses (west side of property);
- (11) Provision of a main entrance which permits full movement for trucks and busses, but prohibits left turns for exiting passenger vehicles under the supervision of a TMP;¹¹ and
- (12) Provide a sign depicting “no parking-loading area.”

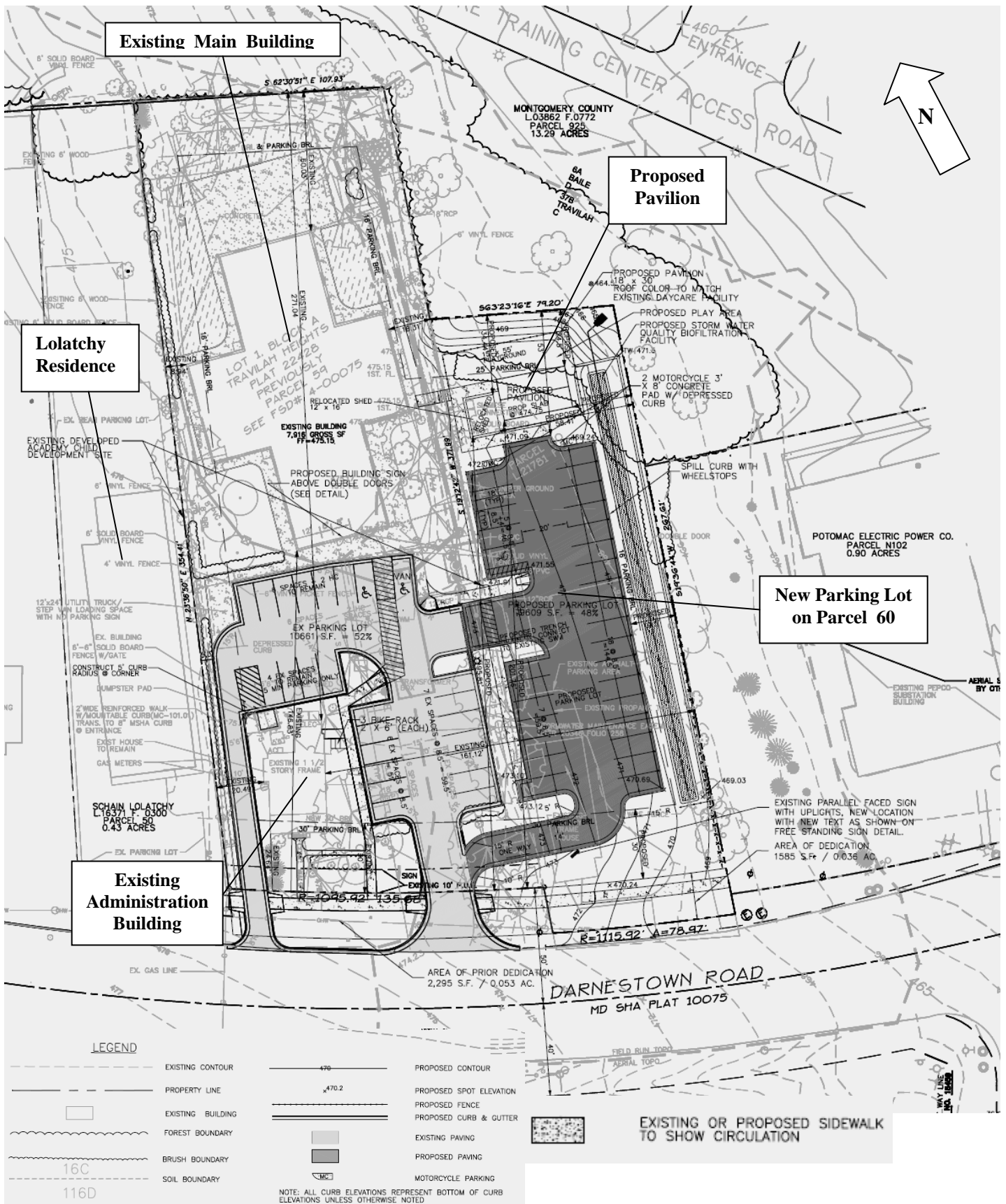
According to Ms. Fleetwood, most Academy families live or work within five miles of the site, and some parents have expressed a desire for first and second grade at the site. Tr. 25. Ms. Fleetwood testified that offering first or second grade along with day care at the same facility meets the needs of the parents of Montgomery County and provides continuity of care. It provides less travel for them, and it also builds relationships. These families need that community because they are working all the time. This way they have the opportunity to meet the families, and their children grow together from infant through second grade, and before and after school. Tr. 32-33.

If the petitions are approved, Petitioner is hoping to be able to have the parking lot completed by the end of summer, 2009. In the fall of 2009, Petitioner would like to take ten first grade children. Then in 2010, Petitioner would take ten additional children, and by 2011 Petitioner would hope to have a maximum of 130 children on site. They would not be there all at the same time, except on school holidays and summer, because there would be 30 after-school children. Tr. 20.

3. Revised Site Plan:

The revised Special Exception Site Plan (Exhibit 53(e)), depicts the combined Lot 1 and Parcel 60. Its site layout is shown on the following page:

¹¹ The language of this request was modified from that which was in the Technical Staff report to reflect the current request of Petitioner, following review by both Technical Staff and the Planning Board. As mentioned in Part I of this report, Staff did not recommend approval of Petitioner’s request to remove the “left turn out” restriction on trucks and busses leaving the site, because Staff felt that the issues related to that request should be addressed, along with the Department of Transportation (DOT), at preliminary plan review. The Planning Board disagreed with Technical Staff’s refusal to recommend removal of the “left turn out” restriction on trucks and busses leaving the site, because



the record demonstrated safe sight distances for trucks and busses. Neither body advocates allowing passenger vehicles to exit the site by making a left turn.

The Development Standards and General Notes set forth on the Site Plan are shown below:

ZONING INFORMATION FOR LOT 1 & PARCEL 60
SPECIAL EXCEPTION USE PROPOSED
Zoned R-90
Section 59-G-2.19 Private Educational Institution

AREAS

LOT 1 BLOCK A TRAVILAH HEIGHTS & PRIOR DEDICATION
PARCEL 60
GROSS TRACT AREA 44,331 SF or 1.017 AC
21,165 SF or 0.486 AC
65,496 SF or 1.503 AC
R/W DEDICATION 50' FROM ROADWAY CL + PRIOR
NET TRACT AREA 3,880 SF or 0.089 AC
61,616 SF or 1.414 AC

DEVELOPMENT STANDARD (59-C-1.32)	REQUIREMENTS	PROPOSED
59-C-1.322		
MIN. LOT AREA	9,000 SF	61,616 SF
MIN. LOT WIDTH	75'	107.93'
MIN. LOT WIDTH AT PROP. STREETLINE	25'	214.66'
59-C-1.328		
MAX. PERCENT NET LOT AREA THAT CAN BE COVERED BY BUILDINGS INCLUDING ACCESSORY BUILDINGS	30%	20%
59-C-1.327		
MAX. BUILDING HEIGHT	35'	18' +/-
59-G-2.19(a)(4)a5		
MAX. CHILDREN AT 87 PER ACRE	1,503x87=130	130 STUDENTS
BUILDING SETBACKS (59-C-1.323)	REQUIREMENTS	PROPOSED
BUILDING SETBACK FROM STREET R/W	30'	EXISTING HOUSE 24.64' EXISTING DAY CARE 146.83'
SETBACKS FROM ADJOINING LOTS SIDES:		
ONE SIDE	8'	EXISTING HOUSE: 20.49' EXISTING DAY CARE: 8.94'
SUM BOTH SIDES	25'	EXISTING HOUSE: 181.61' EXISTING DAY CARE: 27.25'
REAR	25'	EXISTING HOUSE: 271.04' EXISTING DAY CARE: 60.03'

ACCESSORY STRUCTURE SETBACKS (59-C-1.326)	REQUIREMENTS	PROPOSED
FROM STREET R/W	60'	PAVILION 201.76' SHED 195.81'
FROM REAR LOT LINES	5'	PAVILION 24.5' SHED 34.44'
FROM SIDE LOT LINES	5'	PAVILION 25.74' SHED 58.41'

PARKING SETBACKS (59-E-2.83(b))	REQUIREMENTS	PROPOSED
FROM FRONT STREET	30'	30'
FROM REAR LOT LINES	25'	53'
FROM SIDE LOT LINES	16**	5.3' / 19.5'

*PARKING SETBACK IS DOUBLED FOR SPECIAL EXCEPTION WHEN ADJACENT TO RESIDENTIAL ZONE.

PARKING TABULATION

PER (59-E-3.7) (FOR COMBINED DAY CARE AND PRIVATE EDUCATIONAL FACILITY) 1 SPACE PER EVERY NON RESIDENT STAFF MEMBER	PEAK STAFF W/OVERLAP 31 SPACES REQUIRED
1 SPACE (FOR DROP OFF) PER 6 CHILDREN (130 MAX / 6)	22 SPACES REQUIRED
2 SPACES FOR RESIDENCE	2 SPACES REQUIRED
TOTAL PARKING REQUIRED	55 SPACES REQUIRED
TOTAL PARKING PROVIDED	55 SPACES PROVIDED
TOTAL HANDICAP PROVIDED	3 SPACES PROVIDED
TOTAL MOTORCYCLE SPACES PROVIDED	2 SPACES PROVIDED
TOTAL BICYCLE SPACES PROVIDED	3 SPACES PROVIDED

*THREE REGULAR PARKING SPACES ARE BEING REMOVED FROM LOT 1 FOR THE PROPOSED DRIVE THAT IS CONNECTING THE NEW PARKING LOT TO THE EXISTING LOT

NOTES

1. THE PLAN PROPOSES 29 ADDITIONAL PARKING SPACES WITH 1 ADDITIONAL HANDICAPPED SPACE. 1 BUS WILL BE PARKED ON-SITE.
2. THE PLAN PROPOSES THE REMOVAL OF THE EXISTING HOUSE ON PARCEL 60

NOTE:

PROPOSAL TO COMBINE PROPERTIES INTO ONE LOT, MODIFY EXISTING IMPROVEMENTS ON LOT 1 BLOCK A TRAVILAH HEIGHTS & CONNECT WITH NEW IMPROVEMENTS ON PARCEL 60

ZONING INFORMATION FOR LOT 1 & PARCEL 60
SPECIAL EXCEPTION USE PROPOSED
Zoned R-90
Section 59-G-2.13.1. Child Day Care Facility

AREAS

LOT 1 BLOCK A TRAVILAH HEIGHTS & PRIOR DEDICATION
PARCEL 60
GROSS TRACT AREA 44,331 SF or 1.017 AC
21,165 SF or 0.486 AC
65,496 SF or 1.503 AC
R/W DEDICATION 50' FROM ROADWAY CL + PRIOR
NET TRACT AREA 3,880 SF or 0.089 AC
61,616 SF or 1.414 AC

DEVELOPMENT STANDARD (59-C-1.32)	REQUIREMENTS	PROPOSED
59-C-1.322		
MIN. LOT AREA	9,000 SF	61,616 SF
MIN. LOT WIDTH	75'	107.93'
MIN. LOT WIDTH AT PROP. STREETLINE	25'	214.66'
59-C-1.328		
MAX. PERCENT NET LOT AREA THAT CAN BE COVERED BY BUILDINGS INCLUDING ACCESSORY BUILDINGS	30%	20%
59-C-1.327		
MAX. BUILDING HEIGHT	35'	18' +/-
59-G-2.13.1(b)(2)		
MAX. CHILDREN AT 500SF PER CHILD	65,496/500=130	130 STUDENTS
BUILDING SETBACKS (59-C-1.323)	REQUIREMENTS	PROPOSED
BUILDING SETBACK FROM STREET R/W	30'	EXISTING HOUSE 24.64' EXISTING DAY CARE 146.83'
SETBACKS FROM ADJOINING LOTS SIDES:		
ONE SIDE	8'	EXISTING HOUSE: 20.49' EXISTING DAY CARE: 8.94'
SUM BOTH SIDES	25'	EXISTING HOUSE: 181.61' EXISTING DAY CARE: 27.25'
REAR	25'	EXISTING HOUSE: 271.04' EXISTING DAY CARE: 60.03'

ACCESSORY STRUCTURE SETBACKS (59-C-1.326)	REQUIREMENTS	PROPOSED
FROM STREET R/W	60'	PAVILION 201.76' SHED 195.81'
FROM REAR LOT LINES	5'	PAVILION 24.5' SHED 34.44'
FROM SIDE LOT LINES	5'	PAVILION 25.74' SHED 58.41'

PARKING SETBACKS (59-E-2.83(b))	REQUIREMENTS	PROPOSED
FROM FRONT STREET	30'	30'
FROM REAR LOT LINES	25'	53'
FROM SIDE LOT LINES	16**	5.3' / 19.5'

*PARKING SETBACK IS DOUBLED FOR SPECIAL EXCEPTION WHEN ADJACENT TO RESIDENTIAL ZONE.

PARKING TABULATION

PER (59-E-3.7) (FOR COMBINED DAY CARE AND PRIVATE EDUCATIONAL FACILITY) 1 SPACE PER EVERY NON RESIDENT STAFF MEMBER	PEAK STAFF W/OVERLAP 31 SPACES REQUIRED
1 SPACE (FOR DROP OFF) PER 6 CHILDREN (130 MAX / 6)	22 SPACES REQUIRED
2 SPACES FOR RESIDENCE	2 SPACES REQUIRED
TOTAL PARKING REQUIRED	55 SPACES REQUIRED
TOTAL PARKING PROVIDED	55 SPACES PROVIDED
TOTAL HANDICAP PROVIDED	3 SPACES PROVIDED
TOTAL MOTORCYCLE SPACES PROVIDED	2 SPACES PROVIDED
TOTAL BICYCLE SPACES PROVIDED	3 SPACES PROVIDED

*THREE REGULAR PARKING SPACES ARE BEING REMOVED FROM LOT 1 FOR THE PROPOSED DRIVE THAT IS CONNECTING THE NEW PARKING LOT TO THE EXISTING LOT

NOTES

1. THE PLAN PROPOSES 29 ADDITIONAL PARKING SPACES WITH 1 HANDICAPPED SPACE. 1 BUS WILL BE PARKED ON-SITE.
2. THE PLAN PROPOSES THE REMOVAL OF THE EXISTING HOUSE ON PARCEL 60

NOTE:

PROPOSAL TO COMBINE PROPERTIES INTO ONE LOT, MODIFY EXISTING IMPROVEMENTS ON LOT 1

GENERAL NOTES PARCEL 60, FR343

1. Gross lot area = 21,165 sf or 0.486 ac per survey
R/W dedication = 1585 sf or 0.036 ac per survey
Net lot area = 19580 sf or 0.450 ac per survey
2. The boundary information shown for the parcel is from record deeds in the Land Records Office.
3. The topography shown is from field survey by Meridian Surveys dated June 2007.

GENERAL NOTES

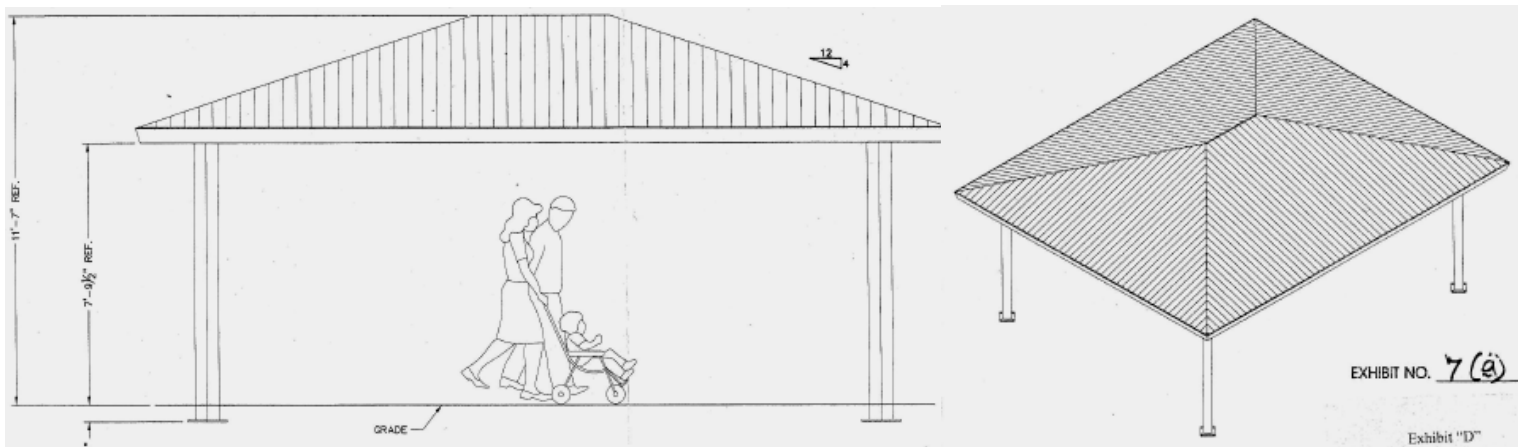
1. Owner:
R,L,L & C Corporation, C/O Ms. Marilyn Fleetwood
Academy Child Development Center
861 Washington Avenue
Chestertown, MD 21620
Tel. (301) 424-6282
2. The site does not contain any steep slopes or restrictive soils.
3. The soils information shown is from the July 1995, Montgomery County Soil Survey prepared by the US Dept. of Agriculture, Natural Resource Conservation Service.
4. Utility information shown on this plan was taken from available records. The exact location of the underground utility shall be field verified by the contractor prior to construction.
5. Site is currently zoned: R-90
6. Water category, W-1; sewer category, S-1.
7. Soils are classified as 6A, Baile silt loam, 0-3% slopes 37B, Travilah silt loam, 3-8% slopes
8. Property is within the Gaithersburg Vicinity Master Plan, Shady Grove Study Area, Planning area 20.
9. NRI/FSD #420080360 has been approved.
10. The proposed pavilion roof is to be red, matching the existing daycare facility.

GENERAL NOTES Lot 1 Block A "Travilah Heights"

1. Gross lot area = 44,331 sf or 1.017 ac per recorded plat
Prior dedication = 2,295 sf or 0.052 ac per recorded plat
Net lot area = 42,036 sf or 0.965 per recorded plat
2. The boundary & area information shown is from record plat: Plat #22428
3. The topography shown is from aerial surveys & aerial photography.

TITLE	
SITE PLAN FOR SPECIAL EXCEPTION	
PROJECT	PROPOSED AMENDMENT TO SPECIAL EXCEPTION S-2435 AND PROPOSED PRIVATE EDUCATIONAL SPECIAL EXCEPTION USE ACADEMY CHILD DEVELOPMENT CENTER LOT 1 BLOCK A TRAVILAH HEIGHTS & PARCEL 60 TAX MAP FR343, FS 341 10109 DARNESTOWN ROAD 9TH ELECTION DISTRICT MONTGOMERY COUNTY, MARYLAND
PREPARED FOR	ACADEMY CHILD DEVELOPMENT CENTER, INC. C/O MS. MARILYN FLEETWOOD, PRESIDENT 10109 DARNESTOWN ROAD ROCKVILLE, MD 20850 (301) 424-6282
	HAINES LAND DESIGN 811 RUSSELL AVENUE SUITE 303 GAITHERSBURG, MD 20879 TEL. (301) 218-9800 FAX (301) 218-9849 E-MAIL NHAINES@EROLS.COM

The removal of the existing house on Parcel 60 will make room for adequate parking for the facility and a the new 18 x 30 foot pavilion to the north of the site. The pavilion will be an open air place for the children to gather, with a concrete base, support columns and a roof to match the roof on the main building. Although an existing shed will be relocated on the property, the pavilion will be the only new structure on the site. Tr. 140-141; 146. Elevations for the proposed pavilion (Exhibit 7(a)) are shown below:

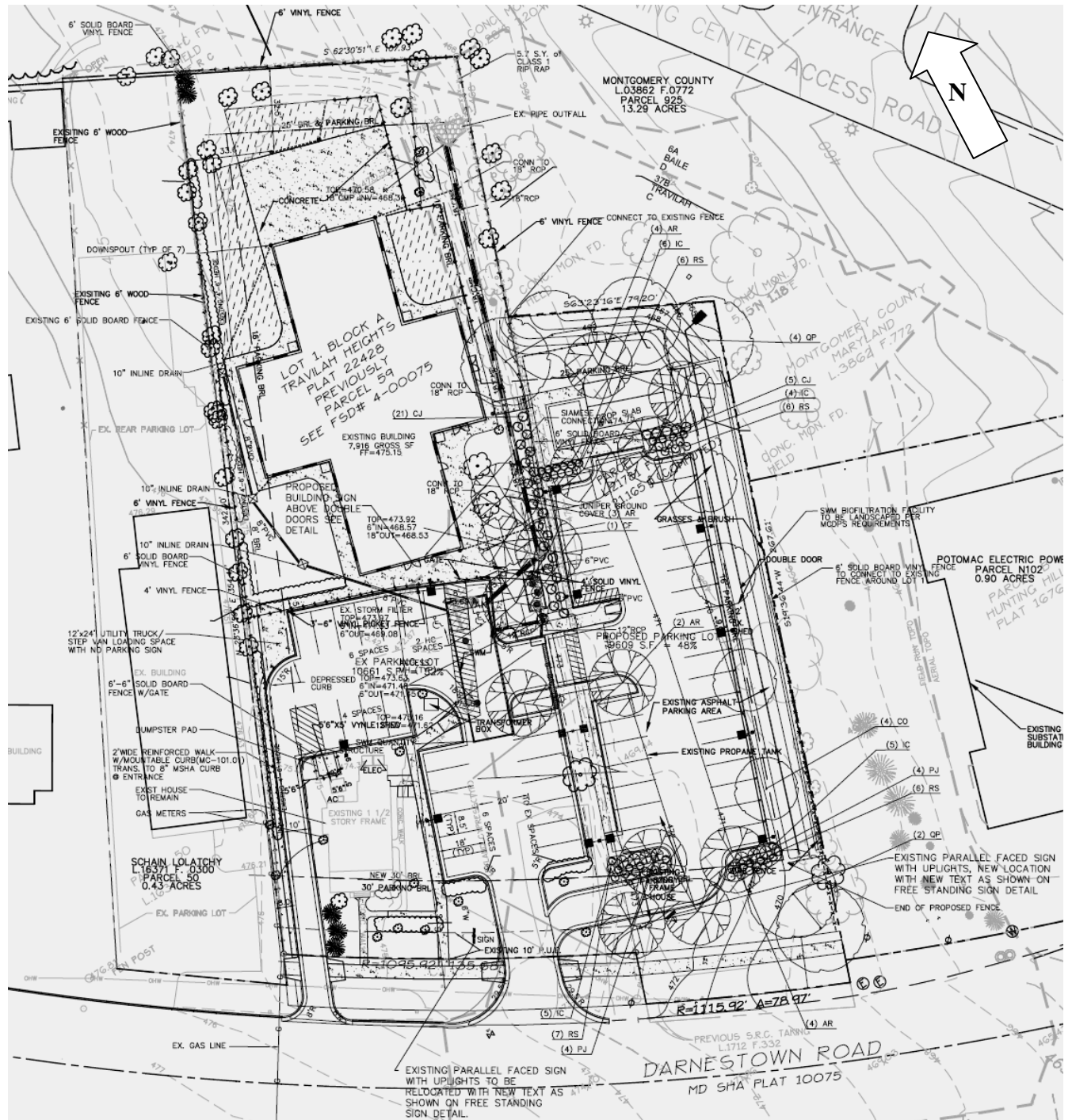


4. Landscaping, Lighting and Signs:

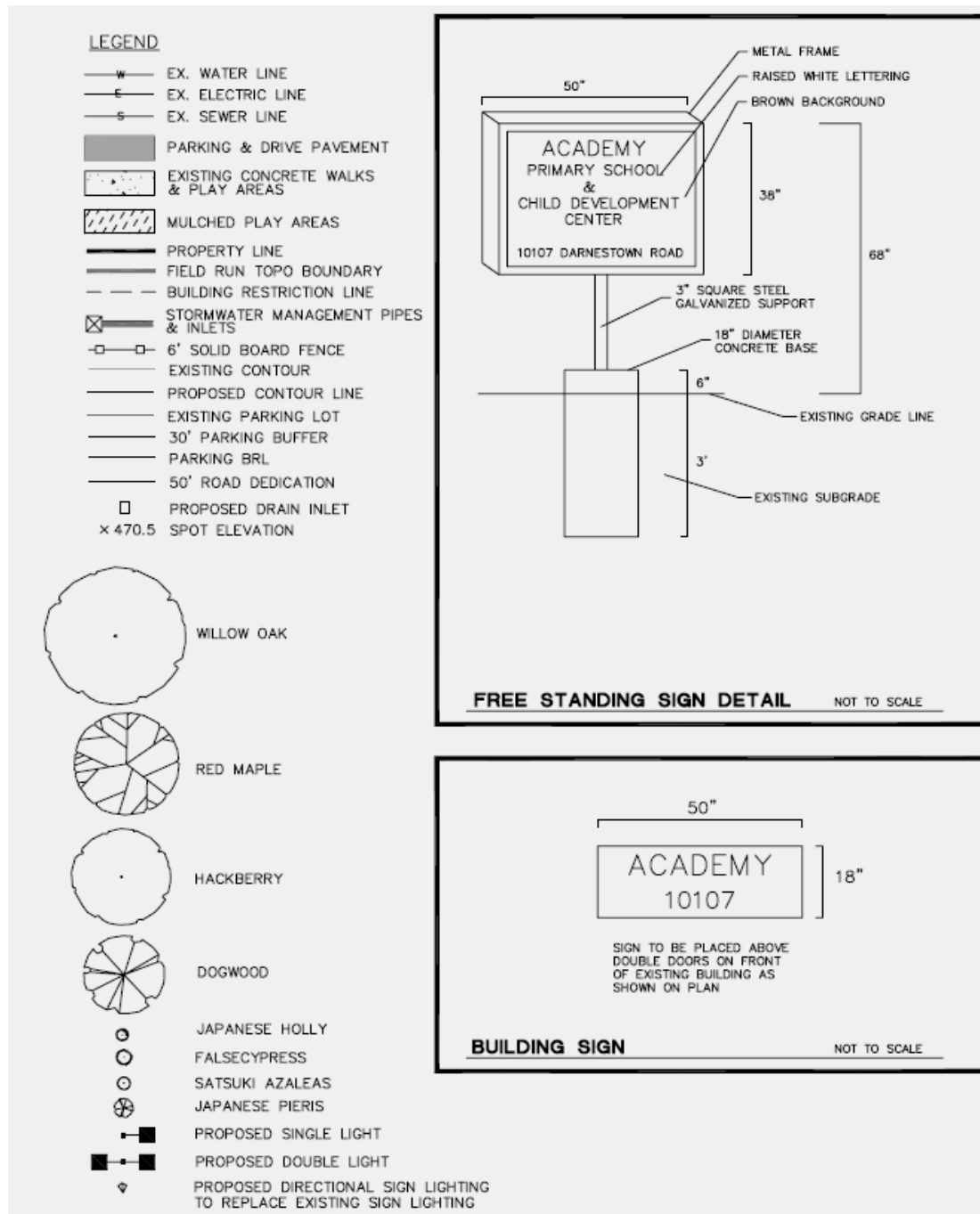
Landscaping on the site is most vividly seen on the rendered landscape plan (Exhibit 35), introduced at the hearing:



The site layout from the final version of the Landscape and Signage Plan (Exhibit 53(f)) is reproduced below. Unlike the rendered version (Exhibit 35), only proposed trees are depicted with their full canopies (large circles), while existing trees are noted with small flowerlike symbols:



The “Legend” for the Landscape Plan, and the “Sign Details” from the Signage portion of Exhibit 53(f), are shown below:



Petitioner seeks permission to provide three signs: one free-standing sign, 5 feet eight inches in height and containing 13.194 square feet in area; one (1) wall-mounted sign on the

existing facility totaling 6.25 square feet in area; and one parking lot sign specifying “No Parking – Loading Area,” which would be added to improve safety for the children.¹²

Although the wall-mounted sign would be new, the existing facility has a freestanding sign similar to that which is being proposed now. The location of the freestanding sign would be changed to make it more visible from the road (Tr. 84), and the lettering would be changed to reflect the addition of the school. On February 24, 2004, the Board of Appeals granted an administrative modification to S-2453 approving, *inter alia*, a free-standing sign of the same dimensions currently sought (50 inches by 38 inches, pole mounted about 5 feet, 4 inches above grade).¹³

Zoning Ordinance §59-F-4.2 provides that, “the total area of all permanent signs on a lot or parcel in a residential zone must not exceed 2 square feet, unless additional area is permitted pursuant to this ordinance.” Petitioner would thus require a sign variance from the Department of Permitting Services (DPS) in order to post the desired signage, pursuant to Zoning Ordinance §59-F-12.1. That section prohibits DPS from approving a sign less restrictive than provided in the Board of Appeals’ conditions, although it may approve greater restrictions.

Technical Staff notes the need for a waiver, but does not object to the proposed signage. Ex. 28, p. 15. Given the Board’s prior approval of a freestanding sign similar to what is now being requested, and the fact that the proposed signs may be needed on a major road to allow drivers to quickly identify the facility, the Hearing Examiner finds that Petitioner’s sign proposals are appropriate.

Lighting for the site and cut sheets are depicted on the Lighting Plan (Exhibits 53(g)) and the Lighting and Photometric Data Plan (Exhibit 53(h)), reproduced on the following pages:

¹² Safety signs are exempted from the sign regulations by Zoning Ordinance §59-F-8.1(a)(3).

¹³ Both the current sign and the proposed sign are lighted, but the proposed sign, at 68 inches in height, would be about 4 inches higher than the current one.



PROPOSED POLES MEET 140MPH SUSTAINED WINDS WITH SPECIFIED EQUIPMENT
 PROPOSED LCF MOUNTING HEIGHT: 12' AFG, TILT: 20 DEGREES ABOVE HORIZONTAL

Proposed Luminaire Schedule (3 single LCF are existing and not listed on this schedule)						
Project: All Projects						
Symbol	Qty	Label	Arrangement	Lumens	LLF	Description
■	6	LCF	SINGLE	8100	0.650	RUUD LIGHTING - LCF3410-M 100W MH
■ ■	2	LCF2	DOUBLE	8100	0.650	RUUD LIGHTING - LCF3410-M 100W MH
◆	1	NS	SINGLE			RUUD LIGHTING - NS6410-D MH
	8	PS4S10CTBZ				RUUD LIGHTING - 10 X 4" SQ. STEEL POLE
	6	PB-1A4				RUUD LIGHTING - SINGLE TENON FOR 4" SQ. POLE
	2	PB-2A4				RUUD LIGHTING - DOUBLE TENON FOR 4" SQ. POLE
	1	MNB-2				RUUD LIGHTING - MOUNTING BOX WITH STAKE

[illegible]

PS
SERIES

PRIMUM STEEL

CROWN-WELD® POLES

PSW1000Z

10' x 3.0 mm x 130 mm

Wall thickness - 0.32 (3 mm)

Base plate - 10' x 24 mm square x 6.30 (1/2") heavy Black

Anchor bolts - 20" x 1.31 (1/2") x 2.10 mm

Full crotch diameter - 10' (254 mm) 9.2" - 11

(225 mm - 273 mm)

Maximum before weight - 5-40 lbs. (118 kg)

Maximum shipping weight - 50 lbs. (22 kg)

Accessories shipping weight - 0 lbs.

PSW1000Z-10

10' x 4.0 mm x 130 mm

Wall thickness - 0.32 (3 mm)

Base plate - 10' x 24 mm square x 6.30 (1/2") heavy Black

Anchor bolts - 20" x 1.31 (1/2") x 2.10 mm

Full crotch diameter - 10' (254 mm) 9.2" - 11

(225 mm - 273 mm)

Maximum before weight - 7-40 lbs. (118 kg)

Maximum shipping weight - 50 lbs. (22 kg)

Accessories shipping weight - 0 lbs.

PSW1000Z-12

10' x 4.0 mm x 130 mm

Wall thickness - 0.32 (3 mm)

Base plate - 10' x 24 mm square x 6.30 (1/2") heavy Black

Anchor bolts - 20" x 1.31 (1/2") x 2.10 mm

Full crotch diameter - 10' (254 mm) 9.2" - 11

(225 mm - 273 mm)

Maximum before weight - 7-40 lbs. (118 kg)

Maximum shipping weight - 50 lbs. (22 kg)

Accessories shipping weight - 0 lbs.

PSW1000Z-14

10' x 4.0 mm x 130 mm

Wall thickness - 0.32 (3 mm)

Base plate - 10' x 24 mm square x 6.30 (1/2") heavy Black

Anchor bolts - 20" x 1.31 (1/2") x 2.10 mm

Full crotch diameter - 10' (254 mm) 9.2" - 11

(225 mm - 273 mm)

Maximum before weight - 5-40 lbs. (118 kg)

Maximum shipping weight - 70 lbs. (32 kg)

Accessories shipping weight - 0 lbs.

PSW1000Z-16

10' x 4.0 mm x 130 mm

Wall thickness - 0.32 (3 mm)

Base plate - 10' x 24 mm square x 6.30 (1/2") heavy Black

Anchor bolts - 20" x 1.31 (1/2") x 2.10 mm

Full crotch diameter - 10' (254 mm) 9.2" - 11

(225 mm - 273 mm)

Maximum before weight - 5-40 lbs. (118 kg)

Maximum shipping weight - 70 lbs. (32 kg)

Accessories shipping weight - 0 lbs.

PSW1000Z-18

10' x 4.0 mm x 130 mm

Wall thickness - 0.32 (3 mm)

Base plate - 10' x 24 mm square x 6.30 (1/2") heavy Black

Anchor bolts - 20" x 1.31 (1/2") x 2.10 mm

Full crotch diameter - 10' (254 mm) 9.2" - 11

(225 mm - 273 mm)

Maximum before weight - 5-40 lbs. (118 kg)

Maximum shipping weight - 70 lbs. (32 kg)

Accessories shipping weight - 0 lbs.

PSW1000Z-20

10' x 4.0 mm x 130 mm

Wall thickness - 0.32 (3 mm)

Base plate - 10' x 24 mm square x 6.30 (1/2") heavy Black

Anchor bolts - 20" x 1.31 (1/2") x 2.10 mm

Full crotch diameter - 10' (254 mm) 9.2" - 11

(225 mm - 273 mm)

Maximum before weight - 5-40 lbs. (118 kg)

Maximum shipping weight - 70 lbs. (32 kg)

Accessories shipping weight - 0 lbs.

PSW1600Z

16' x 3.0 mm x 160 mm

Wall thickness - 1.30 (3 mm)

Base plate - 16' x 24 mm square x 7.50 (1/2") heavy Black

Anchor bolts - 24" x 1.31 (1/2") x 2.10 mm

Full crotch diameter - 16' (406 mm) 12" - 14

(305 mm - 356 mm)

Maximum before weight - 13-60 lbs. (140 kg)

Maximum shipping weight - 13-60 lbs. (140 kg)

Accessories shipping weight - 0 lbs.

PSW1600Z-16

16' x 4.0 mm x 160 mm

Wall thickness - 1.30 (3 mm)

Base plate - 16' x 24 mm square x 7.50 (1/2") heavy Black

Anchor bolts - 24" x 1.31 (1/2") x 2.10 mm

Full crotch diameter - 16' (406 mm) 12" - 14

(305 mm - 356 mm)

Maximum before weight - 13-60 lbs. (140 kg)

Outdoor lighting will be on a timer, which will turn the lights off at 9:30 p.m., daily (Exhibit 41(k)). Petitioner's expert in landscape architecture and site design, Michael Norton, testified that the proposed outdoor lighting is located, shielded, landscaped and otherwise buffered so that no direct light intrudes into any adjacent residential property. A glare and light control device will be used to minimize glare and light trespass, and lighting levels along the side and the rear lot lines will not exceed 0.1 foot candles, as shown in the photometric study (Exhibit 53(h)) reproduced on the following page. Lighting fixtures will be added, but they will be of the same type and style that currently exists. Tr. 150-151. Technical Staff agreed with Mr. Norton's analysis, stating (Exhibit 28, pp. 15-16):

The applicants are proposing six new single-light fixtures and two double-light fixtures in the new parking area. Staff notes that the proposed light fixtures will match the existing lights. These lights are “boxed” fixtures that have a height of twelve feet, from grade to the base of the “box” light. . . . The light fixtures can be adjusted on an angle to minimize the glare. The lighting levels along the side and rear lot lines do not exceed 0.1 foot-candles; therefore, the proposed lighting and photometrics are in compliance with §59-G-1.23(h).



5. Operations and Staffing:

As set forth in Petitioner's Statement of Operations (Exhibit 41(k)), there will be up to 118 children in the day care and up to 40 children in the primary school (first and second grades), but the combined total on site would not exceed 130 at any one time. The number of staff on site at any one time would not exceed 31.

Academy staff are typically divided into three different work schedules. "Openers" generally arrive at 7:00 or 7:30 a.m.; assistants arrive between 8:00 and 8:30 a.m.; and then when those people leave, the "closers" arrive at 10:00 or 10:30 a.m. Most of the staff are full time. There are some part-time, but assistants typically work a split shift (*i.e.*, from 8:00 to 10:00 in the morning). When the morning teachers leave at 3:30 or 4:00, then the assistants return and stay until closing time. This pattern would continue if the petitions are granted. At any given time, Petitioner has about two-thirds of the staff on the site, but, in any event, the maximum on site at any one time would be 31 staff. Tr. 105-107.

Some staff would arrive by 6:30 a.m. to greet early children, and children will not arrive before 6:45 a.m. (Exhibit 41(k)), though most of the childcare children would arrive between 8:00 and 8:30. Tr. 78. Ms. Fleetwood testified that it is difficult to impose across-the-board staggering of arrivals because some parents have multiple children at different age levels. Tr. 77-78. Children in the after-school program would probably arrive about 3:30 p.m. Most of the children are gone before 6:00 p.m., and they must be picked up by 6:30, or there is a penalty. Tr. 72. Staff leave soon thereafter (*i.e.*, by 6:45 p.m.), unless there is a monthly staff meeting, and then they would leave by 8:45 p.m. at the latest. Tr. 72.

In addition to the monthly staff meetings, Petitioner is proposing parent training no more than two nights a week, and those events will end no later than 9 p.m. Tr. 73. Staff training would have up to maximum of 31 people. Parent training might be up to forty people. Staff meetings on

Saturdays may run from 9:00 a.m. to 2:30 p.m., once a month. Saturday parent training would also run from 9:00 a.m. to 2:30 p.m., for up to 50 people. Tr. 73-76.

Special events are listed both in the Statement of Operations (Exhibit 41(k)) and in the revised Transportation Management Plan (TMP), Exhibit 53(a). Ms. Fleetwood described these events in her testimony. Tr. 56; 76-77. There is an annual meeting which all of Petitioner's staff from all locations attend, and that is usually held on the last Friday before school starts. There are parent nights, and the "Center parent night" is usually held at a park because the whole company joins in. Generally, open houses are done for one classroom at a time, so there would be no more than 20 parents attending. Halloween is also done by classroom, or it is held at the Fire Training Academy or elsewhere.

6. Traffic, Parking, Pick-up and Drop-off:

Carl Starkey, Petitioner's expert in traffic engineering and transportation planning, performed a traffic impact analysis for this project, pursuant to local area transportation review (LATR) guidelines. He collected data at three local intersections per the instructions of transportation staff at Park and Planning. Mr. Starkey incorporated other projects that are in the pipeline and conducted a trip generation study for the proposed facility. He factored in the additional student population, and he concluded that a total of 96 additional morning peak-hour trips and 63 evening peak-hour trips will be generated by the proposed expansion. According to Mr. Starkey, those figures are quite conservative because they do not make any deductions for pass-by trips, even though a facility of this type typically is not a final destination point. Tr. 131.

Mr. Starkey then allocated the new trips to the studied intersections. Based on his study, Mr. Starkey found that the intersections would operate adequately for this policy area (*i.e.*, below the applicable critical lane volume, "CLV," threshold). Tr. 132. The critical lane volumes at the studied intersections are shown in Table 1 from the Technical Staff report (Exhibit 28, p. 7):

Intersection	Weekday Peak Hour	Traffic Condition		
		Existing	Background	Total
Darnestown Road & Key West Avenue	Morning	1,036	1,126	1,131
	Evening	1,014	1,098	1,100
Darnestown Road & Travilah Road	Morning	961	1,034	1,036
	Evening	1,023	1,098	1,214
Darnestown Road & Great Seneca Highway	Morning	1,084	1,115	1,174
	Evening	1,117	1,248	1,265

These traffic conditions are all below the 1450 CLV threshold applicable to the R&D Village Policy Area at the time these petitions were filed and below a new 1425 CLV threshold Mr. Starkey said was under consideration.¹⁴ Mr. Starkey also observed that the intersections of Darnestown Road and Travilah Road would operate at service level B during the morning and evening peak hours; Darnestown Road at Key West would operate at service level B during those peak hours; and Darnestown Road at Great Seneca Highway would operate at service level C during those peak hours. All those conditions are above failing, and they meet the thresholds set by Park and Planning and the Council. Tr. 120-121. Technical Staff agreed that “all intersections are currently operating at an acceptable level and they are anticipated to continue to operate at acceptable levels of volumes at the total future development condition (background traffic plus special exception traffic) and therefore, the special exception requests meet the LATR requirements of the APF review.” Exhibit 28, p. 6. Technical Staff also noted that there is no

¹⁴ Technical Staff lists the CLV threshold as 1450 for the R&D Village Policy Area, and states that policy area mobility review (PAMR) requires no trip mitigation for this area. Exhibit 28, p. 6. According to Mr. Starkey, the acceptable CLV threshold for this area will likely be modified to 1425, and new requirements for a 35% mitigation will be imposed under PAMR, pursuant to new LATR/PAMR guidelines. Tr. 118-119; 132. Actually, the new LATR/PAMR guidelines, adopted by the Planning Board on April 17, 2008, change neither the LATR-CLV standard for this policy area, nor the PAMR mitigation requirements; however, new PAMR mitigation percentages were adopted in May of 2008, which would increase the trip mitigation percentage required in the R&D Village Policy Area to 35% for subdivision applications filed after July 1, 2008. Although subdivision will be required in the subject case, for purposes of this special exception, the Board of Appeals may consider only the Growth Policy standards in effect when the special exception petition was filed (February 7, 2008). See Zoning Text Amendment (ZTA) 07-17 (Ordinance No. 16-14, effective March 17, 2008). Those standards did not require any PAMR mitigation in the R&D Village Policy Area, as indicated by Technical Staff.

mitigation required by policy area mobility review (PAMR) for this policy area.

Internal circulation on the site will be improved by creating a one-way directional drive into the closed parking area on Parcel 60, which would allow vehicles to come in, turn right, then turn left to go north on Parcel 60 through the parking lot. The increase of students and staff, up to a maximum of 130 students and 31 staff, will not cause any problems with site circulation and drop off and pick up. With the increased parking area and with increased ability to circulate throughout the site and actually be able to make a complete loop, the proposal is an improvement of the existing conditions. Tr. 126

At the request of Park and Planning staff, Mr. Starkey conducted a queuing survey on site in April 2008. During that time, he did not see any queues exceeding more than one vehicle at the exit driveways for the site, and as shown in Exhibit 21(f), there was only one occasion where somebody actually got out of a car without parking, and that was an adult. He does not anticipate any additional problems in the future. Even if the traffic were doubled, at most two vehicles would queue at the site, and there is more than adequate depth within the site parking lot to accept that type of queue. Tr. 121-122. Mr. Starkey found that the drop off and pick up areas were adequate for the site. The drive aisles are 20 feet wide, and they allow for two-way flow of vehicles in and around the site. Turning radii are adequate. Tr. 123.

Technical Staff “reviewed the proposed internal traffic/pedestrian circulation system shown on the site plan and finds them to be adequate. Staff also finds that the internal queuing area will adequately accommodate the additional traffic.” Exhibit 28, Attachment 5.

Mr. Starkey also found that sight distances are adequate for right turn exit maneuvers by all vehicles. As to left-hand turns from the driveways, the sight distances are adequate for trucks and buses, which have a higher driver-eye height, but not enough for left turn egress by passenger vehicles. Tr. 123-124. In Mr. Starkey’s opinion, the terms of the transportation management plan

can effectively prevent the left-out turns by passenger vehicles at the driveway they use, and it is not necessary to physically alter the entrance to make it right-exit only. Tr. 124-125. The driveway issues will be addressed again at subdivision. Tr. 129-130.

Technical Staff expressed concerns about the safety of allowing any left-hand turns from the main site driveway until enforcement mechanisms can be considered at subdivision to prevent passenger vehicles from making left turns onto Darnestown Road. As stated by Staff (Exhibit 28, p. 7):

. . . once the left-turn restriction for buses and trucks are removed, it will be difficult to enforce the restriction for passenger vehicles, and there is not sufficient sight distance to make a safe left turn. Observations of traffic movements at the main driveway show that cars currently turn left onto Darnestown Road in violation of the left turn restriction. Transportation staff stated that if additional information is provided that shows the left hand turn restriction is not needed or if an effective enforcement mechanism for passenger vehicles could be installed, then the condition of left turn access can be reviewed at time of preliminary plan.

The Planning Board disagreed with Technical Staff on this point (Exhibit 29, p.1):

The Planning Board did not agree with staff's recommendation to defer to the time of preliminary plan, decisions on the applicant's request for relief from the left turn out restriction for truck [*sic*] and busses. The Board believes it is reasonable to support left turn movements from the site for trucks and busses, if the applicant implements a monitoring plan to prevent passenger cars from making the same turning movement. The record indicates that site [*sic*] distances along Darnestown Road at this location would be adequate for left turn movements from the site for truck [*sic*] and busses, but potentially unsafe for passenger cars.

Pursuant to discussions at the hearing, Petitioner proposed a transportation management plan (TMP) which includes provisions for the monitoring and enforcement of the "no left turn" restrictions on passenger vehicles. At the request of the Hearing Examiner and Transportation Staff, the hours of monitoring and the penalties for violations were increased in a revised TMP (Exhibit 53(a)). The Hearing Examiner finds that the provisions of the revised TMP adequately address the concerns of Technical Staff and implement the monitoring recommendation made by the Planning Board. Therefore, the Hearing Examiner recommends that left-turns out of the

driveway be permitted for trucks and busses, conditioned upon enforcement of the TMP. This issue will be addressed again at subdivision, and if the TMP monitoring is found not to be a workable solution for the safety concerns, this condition should be revisited.

Technical Staff specified the parking required on site if the special exception petitions are granted (Exhibit 28, pp. 13-14):

Employees:	31 parking spaces
Students:	22 parking spaces (130 students/6 parking spaces)
<u>Residents:</u>	<u>2 parking spaces</u>
Total:	55 spaces (required)

As specified in the Site Plan (Exhibit 53(e)), 55 parking spaces (3 of which are handicapped spaces) will be provided, in addition to parking for 3 bicycles and 2 motorcycles.

The TMP (Exhibit 53(a), ¶ 2) provides that all staff parking is to be restricted to Parcel 60, to leave the area nearer the school door for parents dropping off children. In the opinion of Petitioner's site designer, Michael Norton, there is an adequate area for discharge and pick up of children provided on site. Tr. 152.

According to Ms. Fleetwood, most of the children don't come before 7:30-8:00. There is a gradual drop off. After 10:30, there is hardly anybody in the parking lot. Parents park, take their children in and sign in. That will continue to be the policy. Ms. Fleetwood stated that there is sufficient parking now to do that, and with the addition of the new parking, there will still be plenty of space. Children are always escorted in and greeted inside the building. This process takes about five minutes. The same is done in reverse for pick up, including signing each child out. There have been no problems regarding parking for pick-ups and drop-offs. There would not be 130 parents dropping off children at the same time. At least 30 children will be before and after, coming on buses. There would be at least 29 to 30 parking spaces for parents to drop off during the peak hours, since staff arrive and leave in shifts. Tr. 23-24; 54.

Petitioner's coordinator and human resources person, Sharon Heselden, testified that she is on site generally every day, during the week, and has not noticed any issues or problems with dropping off children at the center. Parents normally park, unload the children, walk them in the building, come out after they have delivered the children to their teachers, and then they pull out of the lot and go to work. She is not aware of an instance where the staff could not find spaces to park on site on a regular work day. She believes the new parking spaces will be sufficient for the expanded operation. Tr. 107-108. Technical Staff agreed that an "adequate area for the discharge and pick-up of children is provided." Exhibit 28, p. 16.

Petitioner provided a "Canopy Coverage & Greenspace Area Plan" (Exhibit 53(i)) to demonstrate that it will be providing the required shading for the parking areas (30% required; 43% provided) and adequate green space. Technical Staff found that Petitioner will be compliant with applicable parking setbacks, as well as screening and shading requirements (Exhibit 28, p. 14):

Appropriate screening is being provided by the applicant, utilizing pin oak and red maple trees along the eastern, northeastern and southeastern property lines, where the proposed parking area is located. An existing six (6)- foot solid board fence is along the western parking area and the proposed fence for the new parking area will be of similar construction and material type. A four (4)-foot solid wood fence provides separation between the exit only drive and the dance studio/single-family residence parking area. . . . The applicant meets §59-G-2.83(d), Shading of Paved Areas. . . .

7. Environment:

Technical Staff indicates that the subject site has no areas of environmental buffer, streams, 100-year floodplains or wetlands, and that it is not within a Special Protection Area. Exhibit 28, p. 7. Petitioner has filed an approved Natural Resources Inventory/Forest Stand Delineation (NRI/FSD), No. 420080360 (Exhibit 9), and the Planning Board unanimously approved Petitioner's Preliminary Forest Conservation Plan (PFCP), which was revised to comply with comments (Exhibit 28, Attachment 12A) from the Environmental Planning Staff.

See Exhibits 40, 41(d) and (e). A final forest conservation plan will have to be reviewed by the Planning Board at subdivision.

Petitioner's Stormwater Management Concept Plan (Exhibit 12) was approved by DPS in a letter dated April 17, 2008. Exhibit 21(c). Technical Staff described stormwater management on the site (Exhibit 28, p. 7):

. . . The site drains from the southwest to the northeast. Along most of the site's eastern-most property line, a proposed stormwater management quality biofiltration facility is shown. On-site channel protection volume (quantity control) is not required, as the site's peak discharge is less than 2 cfs. The runoff will be conveyed by pipe to the property line that separates Lot 1 and Parcel 60 with an outfall at the northeast end of Lot 1. These combined controls provide on-site water quality and on-site recharge via the proposed biofiltration facility. . . .

Technical Staff raised no concerns with regard to environmental issues.

E. Community Response

The only opposition in this case was raised by Petitioner's next-door neighbor to the west, Schain Lolatchy, who is opposed to the petitions because of his concerns about noise, traffic, parking on his property, early lawn maintenance and early trash pickups. Exhibit 22 and Tr. 80-98. Mr. Lolatchy runs a dance studio on his property as a major home occupation (S-2381) and also resides there.

According to Mr. Lolatchy, cars arrive at the subject site early and remain late. Often horns are honked at 6:30 in the morning. Mr. Lolatchy expressed his concern about the hours of operation, year around, and whether Petitioner's operation will be properly policed for compliance with conditions.

Mr. Lolatchy also fears that doubling the size of the staff and students will require additional early trash pickups and early lawn maintenance, all of which creates noise. However, Mr. Lolatchy's chief complaint has to do with Petitioner's clients parking on his property without

permission during special school events and using his property to make a u-turn and then a left turn out onto Darnestown Road. They take up his parking spaces and often drive over his landscaping, which he has to redo frequently.

A number of steps are recommended in this report to address Mr. Lolatchy's complaints. The main effort is reflected in the transportation management plan (TMP), Exhibit 53(a). It provides for supplying staff and clients with information on vehicle restrictions and monitoring of vehicles to avoid the improper use of Mr. Lolatchy's property, either for parking on special event days or as a site for u-turns. Penalties are also specified for violations:

The Transportation Coordinator or his/her designee shall direct passenger vehicle traffic during the peak morning hour (8:15 a.m. – 9:15 a.m.) and the peak afternoon hour (5:00 p.m. – 6:00 p.m.) at the main entrance/exit to the site. Passenger vehicle traffic shall be directed to refrain from turning left to exit the site, and instead to turn right only in accordance with posted signs, County regulations and approvals. **The Transportation Coordinator shall further note any vehicles leaving the site which then turn into the neighboring property to the west to make a left turn.** While the Transportation Coordinator or her designee shall be officially posted at the entrance only during the peak hours, at all times throughout the day, all staff members shall report any observed violations of the transportation policies contained in this document to the Transportation Coordinator who will take action consistent with the policies herein.

The Transportation Coordinator or his/her designee shall monitor and note the license plate numbers of any motorists who violate the right-turn-out only restriction, or turn into the neighboring property to violate the right-turn-out only restriction and shall be authorized to take the following steps to encourage compliance with the restriction:

- **1st violation – a warning letter which sets forth the penalties for future violations shall be sent;**
- **2nd violation – a \$50 fine shall be imposed;**
- **3rd violation – expulsion from the school or day care;**

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Each year, every staff member and client-parent shall receive parking information which shall state that the adjacent dance studio property is private and not affiliated with Academy and therefore shall not be used for parking or u-turns, and specifying that the main entrance/exit on the Property provides only a one-way exit to the right. Those making the left turn will be on notice that they will be subject to fines and expulsion if they are

observed violating this restriction. Upon receipt of the above-described materials, each person shall sign an acknowledgement indicating that he or she has been advised of Academy's parking and transportation policies, and agrees to comply. **The penalties for violation of the parking and transportation policies shall be as set forth in paragraph 1, above.**

* * *

[As to special events, it] is not anticipated that any of these events will generate more attendees than the parking facilities can manage because most events only serve a limited number of attendees, such as the parent and staff training, and other events will be held on a classroom or age group basis. However, if any event does generate more attendees than the available parking on-site will allow, arrangements will be made by the Transportation Coordinator or his/her designee to direct attendees to satellite parking, and Academy will provide a shuttle service for those guests. **The Transportation Coordinator shall monitor parking at all evening and special events to insure that overflow parking does not impact the neighboring property to the west. The penalties set forth in paragraph 1 shall apply to parking violations.** [Emphasis added.]

In addition to the TMP, moving the sign identifying the subject site, as provided for in the Landscape and Signage Plan (Exhibit 53(f)), will be a partial solution, because with the current sign location, people sometimes miss the Petitioner's driveway and have to turn around to come back.

Noise issues have also been addressed in this report. Petitioner will be required to follow time restrictions for staff and clients, as specified in the Statement of Operations (Exhibit 41(k)).

The following additional conditions regarding noise are recommended in Part V of this report:

15. Petitioner must ensure that trash and recycling pickups and lawn maintenance do not take place before 9 a.m. Monday through Saturday, nor before 10 a.m. on Sundays.¹⁵

16. Outdoor play may not begin before 9:00 a.m. on the northwest play area adjacent to the Lolatchy property. No amplified sound of any kind may be used in the northwest play area adjacent to the Lolatchy property, and no more than 20 children may use that play area at any one time.

17. The Petitioner shall not use a public address system of any kind outside the building, nor shall any amplified music be played outside the building, with the following exception: Petitioner may use a tape or compact disc player to play music, only in the northeast play area on Lot 1 and/or under the Pavilion on the eastern side of the property

¹⁵ At the Hearing Examiner's request, Petitioner has sent letters to its contractors informing them of these restrictions. See Exhibits 53(c) and (d).

(currently called Parcel 60),¹⁶ under the following conditions – Such music may be played only after 9:30 a.m. on weekdays; must not produce noise exceeding 50 dBA at the western property line; and is limited to one hour per day.

While these steps may not eliminate all noise from the proposed facility, a certain amount of noise must be considered inherent in the operation of any school or day care. The recommended conditions should reduce any such problems to reasonable proportions so that they will not adversely affect the neighbors.

In sum, although Mr. Lolatchy has raised some legitimate concerns, they do not warrant denial of the subject petition. They do warrant the imposition of special conditions which have been discussed in order to limit any potentially adverse consequences.

III. SUMMARY OF THE HEARING

Petitioner called four witnesses at the hearing, Marilyn Fleetwood, Petitioner's president; Sharon Heselden, a coordinator and human resources person for Petitioner's operation; Carl Starkey, an expert in Transportation Planning ; and Michael Norton, an expert in landscape architecture and site design. One opposition witness, next-door neighbor Schain Lolatchy, testified. At the beginning of the hearing, Petitioner's attorney, Debra S. Borden, Esquire, announced that the official name of the company that runs the child care center is "Academy Child Development Center, Inc." The trade name that they will be operating under, if they get the private school special exception, will be "Academy Primary School and Child Development Center." Tr. 8-10.

The People's Counsel, Martin Klauber, Esquire, noted that, as discussed at the Planning Board meeting, a Transportation Management Plan (TMP) was needed in this case to insure that passenger cars visiting the site do not make a left turn to exit the site, because the sight distances

¹⁶ The northeast play area and the proposed pavilion are screened by the school building itself, as can be seen on Exhibit 35, reproduced on page 21 of this report.

are inadequate for such vehicles (as distinguished from trucks and busses) to exit safely. Ms. Borden indicated that Petitioner would file a TMP covering this subject after the hearing. Tr. 11-14. Mr. Klauber and Ms. Borden also reported that the Planning Board had approved the Preliminary Forest Conservation Plan at its July 3, 2008 meeting. Tr. 15-16.

A. Petitioner's Case

1. Marilyn Fleetwood (Tr. 16-80; 83-84) :

Marilyn Fleetwood testified that she has been the president and administrator of Academy Child Development Center, Inc., since 1981, and an educator since 1973. Academy Child Development Center, Inc. was established in 1981 as a 501(c)(3) not-for-profit educational institution. There are five locations currently in Montgomery County. Four are located on the campuses of Montgomery County elementary schools. Currently Petitioner offers services from ages two months to 12 years.

The Maryland State Department of Education has licensed and approved Petitioner for child care and kindergarten. Petitioner is also approved for staff training for child care workers, and a couple of its centers are accredited through the National Association for the Education of Young Children.

Ms. Fleetwood is responsible for implementing all of the board's directives and maintaining the company's vision and mission. She does the budget development with her business director and directors. She also works on accreditation achievements, needs, legal regulations, community outreach for the education of parents, the children, and the teachers, and program development.

Ms. Fleetwood testified that the Academy for Child Development Center will agree to be bound by the testimony and the exhibits presented in the record. She then described the history of the special exception, beginning with leasing the site at 10109 Darnestown Road in 1999, and later

leasing Parcel 60 (10105 Darnestown Road). The land is owned by RLLC Corporation, which is owned by her family. The special exception was modified to add a fenced in area for the youngest children; to take down some bushes that had berries on them; and to add an awning. Petitioner was turned down last year in its request for an administrative modification to take additional children.

If approved, Petitioner is hoping to be able to have the parking lot completed by the end of next summer. At that point in the fall of 2009, Petitioner would like to take ten first grade children. Then in 2010, Petitioner would take ten additional children ,and by 2011 Petitioner would hope to have a maximum of 130 children on site. They would not be there all at the same time, except on school holidays and summer, because there would be 30 after-school children.

Ms. Fleetwood further testified that she contacted the training academy behind her property and wrote two letters (November 6, 2007 and March 5, 2008) to Mr. Lolatchy regarding the proposed changes (Exhibits 31 and 32).

In terms of current operations, Staff start arriving a little before seven. Most of the children don't come before 7:30-8:00. There's a gradual drop off. After 10:30 there's hardly anybody in the parking lot. Parents park, take their children in and sign in. That will continue to be the policy. Ms. Fleetwood stated that there is sufficient parking now to do that, and with the extension to the new parking, there will still be plenty of space. Children are always escorted in and greeted inside the building. This process takes about five minutes. The same is done in reverse for pick up, including signing each child out. There have been no problems regarding parking for pick-ups and drop-offs.

Most Academy families live or work within five miles of the site, and some parents have , expressed a desire for first and second grade at the site. [According to Ms. Borden, the child care special exception automatically includes through kindergarten. Tr. 25-26. The Board of Appeals Opinion granting the original Special exception (S-2453 – Exhibit 33) was put into the record.]

Though the Board's opinion does not expressly mention the inclusion of kindergarten, Ms. Fleetwood indicated that it was included in the record of that case. Tr. 25-26.

Ms. Fleetwood further testified that offering first or second grade along with day care at the same facility meets the needs of the parents of Montgomery County and provides continuity of care. It provides less travel for them, and it also builds relationships. These families need that community because they're working all the time. This way they have the opportunity to meet the families, and their children grow together from infant through second grade and before and after school. That program has a great reputation with parents and the community.

Ms. Fleetwood stated that Petitioner's staff are well-trained and highly qualified. The class sizes are small, and there has been a loss of space in child care in the public schools, so parents are scrambling to look elsewhere.

According to Ms. Fleetwood, Petitioner's trash pick-up is scheduled to come in the morning after 9:30, twice a week, and there is a pick-up for recycling, once a week on Wednesdays. They come generally in the middle of the morning or middle of the afternoon. She does not want them before 9:30 or after 3:30, to eliminate any vehicle back-up because they have to back up and unload. She indicated that she called the lawn company and asked them not to come before 9:00 a.m. when their early arrival was brought to her attention by Mr. Lolatchy. She would not oppose a condition in the special exception providing that lawn maintenance shall not occur before 9 a.m.

Ms. Fleetwood stated that it would be developmentally inappropriate to prohibit outdoor play before 9:30 in the morning. It is important because Petitioner is required to have the children go out at least twice a day for a short time. It's not before 8:00 or 8:30 because most of the children don't arrive that early. There is no outdoor amplification of sound, but she would like to be able to play music outdoors because that's part of a motor activity. [Mr. Klauber raised the

issue of where the play areas are in relation to the next-door neighbor and how many children would be allowed at one time in the play area.] Using a rendered landscape plan (Exhibit 35), Ms. Fleetwood identified the location of the play areas, northeast and northwest of the child care building. She also located Mr. Lolatchy's house and parking lot on the plan.

Ms. Fleetwood indicated that the new parking is to the east of Petitioner's existing parking. A pavilion will be located north of the new parking on Parcel P-60. It backs up to the Fire Training Academy and to the Pepco substation, to the east. The existing house on Lot 1 contains administrative offices and an upstairs bedroom for Ms. Fleetwood. That house will remain, but the existing house to the east (*i.e.*, on Parcel 60) will be removed.

According to Ms. Fleetwood, there is currently a restriction on the east entrance which is the wider entrance on the plan. That restriction says no left turns out of the site. There is a problem in that people still make left turns from that driveway in spite of the left turn prohibition. Ms. Fleetwood testified that Petitioner is willing to expand a monitoring program to eliminate that issue, per the recommendation of Technical Staff. There is a no-left-turn sign, and someone would be posted at the main entrance/exit to direct people during the prime time of the day, and then also to make note of the people who are violating the prohibition with their license plate numbers. These violations will be reported.

Ms. Fleetwood further testified that Petitioner averages at least ten families a year that have at least two or three siblings in the program. They get dropped off at the same time in the same vehicle. Other children arrive at Academy by school bus during the school year. Petitioner has a partnership with Montgomery County Public Schools (MCPS) to accept Head Start children for wrap around care because their elementary schools do not have enough space or they've eliminated the child care in the elementary school. Petitioner also has a partnership with Montgomery County Public Schools' PEP Program which is their preschool educational program

for children at risk with special needs, and they may be dropped off at different times of the day. Then there are after-school children who come from other elementary schools on MCPS buses.

The number of children arriving by school bus varies each year. Petitioner is proposing 15-20 after school in the next three years. The bus has an assistant on the bus with them, and they will bring them in and meet the teacher at the door, to sign them in. The school system may call ahead and let them know when they're coming, and they pull up to the door. There's always somebody that greets them at the bus when they come up, either a staff member or an assistant on the bus that brings them into the front door. At Mr. Klauber's suggestion, Ms. Fleetwood agreed to make this procedure a term of the transportation management plan (TMP).

In Ms. Fleetwood's opinion, the special exception modification and the new special exception will be in harmony with the general character of the neighborhood and will not be detrimental to the peace, enjoyment, economic value or development of the surrounding properties or the general neighborhood. They will not cause objectionable noise, vibration, fumes, odors, dust, elimination, glare, or physical activity; nor will they adversely affect the health, safety, security, morals, or, general welfare of residents, visitors, or workers in the area.

Ms. Fleetwood testified that Petitioner does not use amplified sound outdoors, but would like to have the option of playing music on a cassette player outdoors. Petitioner has not been doing so thus far, and would not object to some restriction about outdoor amplified sound.

On cross-examination by Mr. Lolatchy, Ms. Fleetwood testified that she does not recall seeing a site plan of his building. She indicated that there are currently 29 parking spaces in total on her property, and that would expand to 55. There are currently 19 staff, and Petitioner plans to have a total maximum of 31. That includes administrative staff and custodial staff, but the one custodian comes after hours, not during the day.

According to Ms. Fleetwood, several staff members come by public transportation, and the rest park in the main parking lot. Sometimes she parks over on her other property. There are very few drop offs after 10:30 a.m., but staff, which arrives and leaves in shifts, do park on site. There wouldn't be 130 parents dropping off children at the same time. At least 30 children will be before and after coming on buses. There would be at least 29 to 30 parking spaces for parents to drop off during the peak hours. She does not feel there is currently a problem with parking during the regular school day; however, she believes that additional parking to be added will alleviate Mr. Lolatchy's concerns about people parking on his lot.

Ms. Fleetwood further testified that to reduce the problem of special event parking, Petitioner no longer has all of the parents come at the same time. They do a classroom at a time. So, if there's a Halloween party the parents have letters. Petitioner sends out letters and asks parents to park at the Fire Safety Training Academy, the Maryland Technical School, if extra people have been invited. Petitioner has had people stand out and tell parents not to park in Mr. Lolatchy's parking lot and has posted signs to that effect. [The Hearing Examiner explained to Mr. Lolatchy how a TMP would provide enforcement of its terms.]

Ms. Fleetwood estimated that the grassy play area on the northwest of her site, adjacent to the Lolatchy property, is about 75 feet from his building. That play area is used by 10 to 15 infants and toddlers at a time.

Ms. Fleetwood testified that she is on site two or three days a week, and sleeps there. Even after the facility is enlarged, trash pick up will still be only twice a week.

When asked how she reached the conclusion that the school expansion would not adversely affect property values, Ms. Fleetwood replied that the day care is an asset to the community because Petitioner is providing a service that is very convenient for the families which may occupy nearby housing.

Mr. Klauber asked that Petitioner specify the maximum number of children for each special exception. Ms. Fleetwood estimated that the first and second grade portion will not exceed 40 students, with 15-20 in each class. There would be up to 118 in the day care, but the combined total on site would not exceed 130. Ms. Fleetwood agreed to a condition that the maximum number of children in child care would be 118, and the maximum number of children in the school (*i.e.*, first and second graders) , would be 40, but in no event shall the total number exceed 130.

According to Ms. Fleetwood, staff would arrive by 6:30 a.m. and children will not arrive before 6:45 a.m., though most would arrive between 8:00 and 8:30. It is difficult to impose across-the-board staggering of arrivals because some parents have multiple children at different age levels. Children in the after-school program would probably arrive about 3:30 p.m. Most of the children are gone before 6:00 p.m., and they must be picked up by 6:30 or there is a penalty. Staff leaves soon thereafter, unless there is a monthly staff meeting, and they would leave by 8:45 p.m. at the latest. Aside from a staff meeting once a month, Petitioner is proposing parent training no more than two nights a week, and those events will end no later than 9 p.m. Staff training would have up to a maximum of 31 people. Parent training might be up to forty people. Staff meetings on Saturdays may run from 9:00 a.m. to 2:30 p.m., once a month. Saturday parent training would also run from 9:00 a.m. to 2:30 p.m., for up to 50 people.

As to special events, there is an annual meeting once a year where all of Petitioner's staff from all locations attend, and that's usually held on the last Friday before school starts. There are parent nights and the Center parent night is usually held at a park so it's the whole company. Generally, open houses are done for one classroom at a time, so there would be no more than 20 parents attending. Halloween is also done by classroom, or the Fire Safety Training and the Maryland Technology Center will be used.

2. Sharon Heselden (Tr. 98- 111):

Sharon Heselden testified as a rebuttal witness. She stated that she is a project coordinator and human resources person for the Academy Child Development Center, and she has worked for the company since 1990. Ms. Heselden has been at this facility on Darnestown Road since 1999 when Petitioner first purchased the property, a year before the child care center opened. She helped plan the classrooms and the facility, and dealt with the contractors. She works in the house, on site, hires staff and helps prepare the budget. In addition to her and Ms. Fleetwood, there is an administrator, Leslie Everhart, and a business manager, Judith Dodge.

Ms. Heselden testified that there were parking problems originally when the center first opened. The plumber did drive across Mr. Lolatchy's property and his parking lot in front of his building. The Center had a gravel path, so people parked in his lot and walked across to the house which is Petitioner's administrative office. Mr. Lolatchy was very upset about that. He came to see her personally, and she felt very threatened by him when he approached her. Generally, Petitioner's contractors pulled onto Petitioner's property where the gravel parking pad was, but on a few occasions they parked on Mr. Lolatchy's property.

Ms. Heselden stated that her desk looks out onto Darnestown Road, and she sits right in front of the window. She can see his parking lot from her desk, and maybe four times since Petitioner has been there, she has seen people pull in and make a u-turn. There is a problem when they've had special events, and Petitioner has made efforts to post a parking attendant there to tell parents not to park in the Lolatchy lot. They have even gone in the building and made a PA announcement telling people to move their cars if they parked in the dance studio lot. Mr. Lolatchy has exaggerated the number of incidents. "I mean, this stuff does not happen on a regular basis at all." Tr. 102.

From where Ms. Heselden sits in her office, she cannot hear the children playing outside during the day. Although her office is in front of the lot and the play area is to the rear, Petitioner's counsel noted that one end of the Lolatchy building is close to where Ms. Heselden sits. Ms. Heselden indicated that she doesn't see Mr. Lolatchy's back parking lot, but she has a clear view of the front parking lot, and it is filled almost every night of the week, sometimes with people double parking. They park one car directly behind the other, with 4 to 8 parked cars in the parking lot. Somebody turns around on occasion, but it is a parking lot.

Ms. Heselden testified that she is on site generally every day during the week. Academy staff are typically divided into three different work schedules. Openers arrive at 7:00 or 7:30 a.m.; assistants arrive between 8:00 and 8:30; and then when those people leave, the closers arrive at 10:00 or 10:30 a.m. Most of the staff are full time. There are some part-time, but assistants typically work a split shift. That means that they are there from 8:00 to 10:00 in the morning. Then the closers come at 10:00. When the morning teachers leave at 3:30 or 4:00, then the assistants return and stay until closing time. This pattern would continue if the petitions are granted. At any given time, Petitioner has about two-thirds of the staff on the site. But, in any event, the maximum on site at any one time would be 31 staff.

Ms. Heselden has not noticed any issues or problems with dropping off children at the center. They arrive safely. Parents normally park, unload the children, walk them in the building, come out after they've delivered the children to their teachers, and then they pull out of the lot and go to work. She is not aware of an instance where the staff couldn't find spaces to park on site on a regular work day. She believes the new parking spaces will be sufficient for the expanded operation. She would not object to a condition requiring all staff parking to be restricted to Parcel 60, to leave the area nearer the school door for parents dropping off children. Petitioner's counsel indicated that such a requirement could be put in the transportation management plan.

According to Ms. Heselden, there is a six foot tall, solid wood fence between the western play area and Mr. Lolatchy's property, running from the center of the property to the rear. In front, of that there is the low, white picket fence.

[Petitioner's attorney introduced the program description (Exhibit 37) and the Petitioner's proposal (Exhibit 38) that had been included in the original special exception in an effort to demonstrate that kindergarten was part of that use. She noted that the child care special exception itself includes day care, preschool and kindergarten. In the definition of Child Care Center at Code §59-A-2.1, it says at the end of the definition, preschool and kindergarten educational programs subject to accreditation by state are permitted as an accessory use in all child care facilities. Mr. Klauber suggested that the makeup of the child care center and school student bodies should be specified in a Statement of Operations. Tr. 112-117.]

3. Carl Starkey (Tr. 117-134):

Carl Starkey testified as an expert in traffic engineering and transportation planning. Mr. Starkey visited the site three times and is familiar with the nearby road network and with the recent revisions to the growth policy. There were modifications in the acceptable critical lane volume (CLV) threshold for this area, and there are new requirements with respect to the policy area mobility review (PAMR). He believes that the critical lane volume standard for this area is currently 1425, but at the time it was 1450. The current proposal will be subject to a 35 percent mitigation in this area if new local area transportation review guidelines are approved.

Mr. Starkey performed a traffic impact analysis for this project, pursuant to local area transportation review guidelines. He collected data at three local intersections per the guidance of transportation staff at Park and Planning. He incorporated other projects that are in the pipeline and for the site, and conducted a trip generation study at the site driveway to determine the existing trip patterns and hours on the street. He included the additional student population, and

he concluded that a total of 96 additional trips in the morning and 63 in the evening peak hours will be generated by the proposed expansion. Those figures are quite conservative because they do not make any deductions for pass-by trips, even though a facility of this type typically is not a destination point. He then allocated the new trips to the studied intersections. Based on his study, Mr. Starkey found that the intersections would operate adequately for this policy area (*i.e.*, below the CLV threshold).

Specifically, the intersections of Darnestown Road and Travilah Road would operate at service level B during the morning and evening peak hours; Darnestown Road at Key West would operate at service level B during those peak hours; and Darnestown Road at Great Seneca Highway would operate at level of service C during those peak hours. All those conditions are above failing, and they meet these thresholds set by Park and Planning and the Council.

Internal circulation on the site will be improved by creating a one-way directional drive into the closed parking area on Parcel 60, which would allow vehicles to come in, turn right, then turn left to go north on Parcel 60 through the parking lot. At the request of Park and Planning staff, Mr. Starkey conducted a queuing survey on site in April 2008. During that time, he did not see any queues exceeding more than one vehicle at the exit driveways for the site, and as shown in exhibit 21(f), there was only one occasion where somebody actually got out of a car without parking, and that was an adult. He does not anticipate any additional problems in the future. Even if the traffic were doubled, at most two vehicles would queue at the site, and there is more than adequate depth within the site parking lot to accept that type of queue.

Mr. Starkey did not observe people entering Mr. Lolatchy's driveway, but he wasn't looking for it. On his visits to the site the parking lot, the existing parking lot was never over-parked, and there was never a queuing problem. He observed a trash truck on one occasion, which came through, got loaded, and went out the exit driveway about 11:00 a.m.

Mr. Starkey found that the drop off and pick up areas were adequate for the site. The drive aisles are 20 feet wide and they allow for two-way flow of vehicles in and around the site. Turning radii are adequate. Sight distances are adequate for right turn exit maneuvers. The sight distance at the driveways is adequate for trucks and buses, which have a higher driver-eye height, but not enough for left turn egress by passenger vehicles.

In Mr. Starkey's opinion, the terms of the transportation management plan can effectively prevent the left-out turns by passenger cars at the driveway they use, and it's not necessary to physically alter the entrance to make it right-exit only. That subject will be addressed again at subdivision. Also, the increase of students and staff, up to a maximum of 130 students and 31 staff, will not cause any problems with site circulation and drop off and pick up. With the increased parking area and with increased ability to circulate throughout the site and actually be able to make a complete loop, the proposal is an improvement of the existing conditions.

Referring to the rendered landscape plan, Mr. Starkey indicated the locations of sidewalks in and around the site. In his opinion, the proposed special exception modification and the new special exception at this location will not create a traffic hazard or traffic nuisance. The intersections in the specific area for this facility operate at level C or better, a very optimal condition, and Darnestown Road is also working adequately. The proposed special exception modification and the new special exception also will not reduce the safety of vehicular and pedestrian traffic. Pedestrian accessibility on site will be enhanced, and the existing road network has more than adequate capacity to handle the additional trips. The internal vehicular and pedestrian circulation points and external access will be safe, adequate, and efficient. Mr. Starkey submitted a sight distance evaluation for trucks and buses coming out of the driveways, and in his opinion, it would be safe for trucks and buses to make the left turn.

Mr. Starkey proposed that staff parking be located on the easternmost limits of the property in Parcel 60. He agreed that this could be accomplished by prohibiting staff members from parking to the west and not prohibiting parents from parking to the east. [Mr. Klauber suggested that signs be posted to that effect.]

Mr. Starkey agreed that the intersection of Darnestown Road and Key West Avenue would be one of the key intersections that would be impacted, and from a transportation perspective, is within the neighborhood to be observed. There may also be traffic impacts on Pommel Drive, to the south, via Yearling Drive, but Mr. Starkey did not have an opinion as to whether it should be included in the definition of the general neighborhood.

4. Michael Norton (134-163):

Michael Norton testified as an expert in landscape architecture and site design. He prepared the landscape plan, the site plan, the lighting plan and the forest conservation plan in this case. The first special exception was for Lot 1, as the existing residential and the proposed child day care center, with the circulation shown south of the child day care center. Petitioner is proposing to add Parcel 60 to the east for a total of about 1.5 acres, with additional parking to accommodate the growth of the facility, and a new 18 x 30 foot pavilion to the north. It's going to be an open air place for the kids to gather underneath, with a concrete base, support columns and a metal roof. An existing shed will be relocated on the site.

According to Mr. Norton, the existing stormwater will be captured in a slot drain and carried away. The new area will be treated by a new bio-retention facility between Parcel 60 and the Pepco property. Petitioner's stormwater concept plan has been approved.

Petitioner intends to relocate its existing sign to the east of the main driveway to make it more visible to vehicles approaching the site. There will be dedication of 1,585 square feet along Darnestown Road in front of Parcel 60. The existing house that is on parcel 60 will be removed.

Mr. Norton testified that the site plan shows the location of all the buildings, structures, parking spaces, driveways, loading and unloading areas, play areas, and other uses on the site. The submitted landscape plan shows the location, height, caliper and species of all plant materials on site. The property currently (Lot 1) is primarily level; Parcel 60 drops approximately 7 feet from the western side to the eastern side. That will not present any storm drainage problem.

According to Mr. Norton, the maximum of 130 children will conform to the requirements of no less than 500 square feet per child and no more than 87 children per acre. In Mr. Norton's opinion, the height of the proposed pavilion is consistent with the existing development and the surrounding neighborhood, and will be compatible in its siting, landscaping, scale, bulk, height, materials and textures. The pavilion is open. It's approximately 18 feet high at the peak. With the landscaping and with the massing it will take on a residential appearance. It will be the only new structure. Its roof will be similar to the roof that's on the existing school building. Based on his expertise in landscape architecture and site design, Mr. Norton does not believe this proposal would have a negative impact on the adjacent or abutting uses in the neighborhood. He opined that it works within the community. Most of the children come from a few miles away. The combination of the massing of the buildings, the low height of the buildings, the residential feel of it, all will work within the community. It will be compatible with the surrounding community.

Mr. Norton affirmed that the proposed outdoor lighting is located, shielded, landscaped and otherwise buffered so that no direct light intrudes into any adjacent residential property. A glare and light control device will be used to minimize glare and light trespass, and lighting levels along the side and the rear lot lines will not exceed 0.1 foot candles, as shown in the photometric study. Lighting fixtures will be added, but they will be of the same type and style that currently exists. Cut sheets describing the fixtures will be added to the revised lighting plan.

According to Mr. Norton, the development standards charts located on the site plan show that the site, as designed, complies with the code requirements for the zone. There will be a total of 55 parking spaces. There will be 31 spaces for the staff; 2 spaces for the existing residents and one space per six children being dropped off ($130/6 = 22$ spaces), for a total of 55. Of those spaces, three are handicap spaces, one is the bus handicap, and there will be two motorcycle spaces, and a bicycle rack. In Mr. Norton's opinion, there is an adequate area for discharge and pick up for children provided on site. Based on his expertise as a landscape architect, the proposed changes to the special exception and the new special exception will not result in a nuisance because of traffic, parking, noise, or any type of physical activity on site.

Mr. Norton further testified that the six foot wood fence was extended by Petitioner with a six foot white vinyl fence to 40 feet in front of the Lolatchy's house, and then it goes down to the three foot white picket fence. The distance from the north end of the neighbor's residence to the area that was designated as the western play lot is about 55 feet. Mr. Norton does not see noise as an issue because the intervening fence, trees, and six-foot hedges and the corner of the Academy building would buffer the sound. Mr. Lolatchy has a home occupation special exception for his dance studio.

Based on his expertise as a landscape architect and also after reviewing the staff report, Mr. Norton would agree with their findings that the proposed special exception would be in harmony with the general character of the neighborhood. He also agrees that the special exceptions will not be detrimental to the use, peaceful enjoyment, economic value and development of surrounding properties or the general neighborhood. Further, he agrees that the special exceptions would not cause objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site. Mr. Norton also opined that the proposed special exception uses would not increase the number or intensity or scope sufficiently to adversely affect or alter the predominantly

residential neighborhood of the area; nor would they adversely affect the health, safety, morals, or, general welfare of residents, visitors, or workers in the area. He stated that his site design conforms to the master plan, which encourages day care use within that area.

Mr. Norton testified that the main building has a red roof, and the pavilion roof will match that, as will be indicated in revised plans to be submitted.

B. Community Participant

Schain Lolatchy (80-98):

Schain Lolatchy testified that he lives at the property adjacent to the Training Academy. He has a small dance studio that occupies less than one-third of the building which is classified as a major home occupation. He and his family reside in the rest of the building, and he also works at the studio. He is there almost 24/7.

According to Mr. Lolatchy, cars arrive at the subject site between 6:30 and 6:45 a.m., and they're there until 7:30 p.m., except for weekends. Quite often, at 6:30, 6:45 in the morning, there are kids who love to honk their parents' car horn. Sometimes the alarm goes off and it takes a while for the alarm to get turned off. By the time he and his sons go to sleep, sometimes it's around 12:30 a.m. or 1:00 in the morning because they work late, and for car alarms to go off at 6:30-7:00 in the morning is a nuisance. Mr. Lolatchy expressed his concern about the hours of operation, year around, and whether Petitioner's operation will be properly policed for compliance with conditions.

Mr. Lolatchy fears that doubling the size of the staff and students will require additional trash pickups. Trash trucks sometimes are there daily and have to maneuver on a narrow driveway. They come every Saturday morning at 7:45, and even though he has asked Mrs. Fleetwood change this, nothing has been done. Exactly at 7:45 a.m., the lawn maintenance crew shows up at the property, and there are numerous lawnmowers that operate at 7:45 a.m. on Saturdays. If Petitioner

is to have Saturday classes, that means the lawn maintenance would have to come even earlier on Saturdays.

Mr. Lolatchy further testified that “a huge problem” is parking. Users of Petitioner’s property park on his lot when Petitioner’s lot is full and parents who are not permitted to make a left turn out of Petitioner’s property make a right turn out of that property, and then they turn into his property and to make a left turn out. That's been a continuing problem since the beginning, and the bigger problem is that they have no respect for his property. They drive over his landscaping, and he has to redo it on a weekly basis.

[Petitioner’s attorney, Ms. Borden, indicated that moving the sign identifying the subject site will be a partial solution because people miss the Petitioner’s driveway and have to turn around to come back.] Mr. Lolatchy responded that he lives there and sees parents turn out of their property, come into his, make a u-turn, and then make a left turn and go out. He has a letter from Ms. Fleetwood dated November 22, 2006 (Exhibit 36) admitting this problem exists.

Mr. Lolatchy indicated that the biggest problem he has with the Academy, and it will get much worse, is when they have special events, people park on his lot. Once a month, sometimes twice a month, sometimes more often, they have special events and they take every space on his lot. He doesn’t have time or inclination to antagonize his neighbors by having them towed. He has asked Ms. Fleetwood to have cars removed, and characterized the situation as a “nightmare.” It “paralyzes” his operation and his life. Tr. 87.

Mr. Lolatchy identified his driveway, on the existing west end of his property, and it goes all the way past his house and then to parking areas to the north. He has only ten parking spaces back there. People actually enter his property, drive past his house, and park in the rear lot. And it happens not just on the isolated situations; not just one or two cars. Mr. Lolatchy has tag numbers for the past seven or eight years and has submitted those tag numbers to Ms. Fleetwood. In fact, on

several occasions one of her staff members has come through his studio, interrupted his lessons and apologized for being parked there. Usually, the parking problems are once or twice a month when there is a special event, but the turning into his driveway, making a u-turn, that happens pretty much all the time.

[The Hearing Examiner discussed having a provision in the TMP requiring Petitioner to post someone at the driveway to see that Petitioner's guests do not park on Mr. Lolatchy's property. The People's counsel suggested the possibility of establishing a community liaison council with Mr. Lolatchy on it, a representative of the school on it, a representative of the citizens association in the area on it, which would meet once a year so that adjustments can be made. The Hearing examiner stated that a community liaison council ordinarily works well, but since there is only one opposition person, the next door neighbor, and we haven't heard from the community, the transportation management program would be a better vehicle which to allow some communication on these issues. Petitioner's Counsel agreed.]

Mr. Lolatchy added that this is not the first time this has been raised. In fact, from the day that she planned on opening her Academy, he has had a problem with his property being abused. When they were building her building, plumbers would drive right through his property and rip out fences and parents trample all over everything. He has brought it all to Ms. Fleetwood's attention.

There is a fence that separates the properties. The fence that comes right up to Mr. Lolatchy's house is six feet high, but, from where his house ends to the street, there's a small fence that he built that's about three feet high. But, that doesn't stop people from parking and just walking over to the day care property. He has talked to the people, and they get very angry at him because they feel that he is not being neighborly by prohibiting them from using his property.

Mr. Lolatchy indicated that his parking is in the rear, but there is a paved turnaround area in the front where people sometimes park. He has not gone over to the Academy personally in recent years because when he went there they were very nasty and rude to him. Instead, he has written them letters.

C. People's Counsel

Martin Klauber, the People's Counsel, did not call any witnesses, but he did participate in the hearing and ultimately stated his support for the petitions, if properly conditioned. Tr. 169-171. Mr. Klauber advised that Petitioner should submit a formal Statement of Operations, in addition to the TMP, and he noted that Petitioner has agreed to the suggestions and recommendations made by his office. He stated that he supported both petitions because "special exceptions of this type are of the public interest." Tr. 170-171.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. The special exception is also evaluated in a site-specific context because there may be locations where it is not appropriate. A special exception use is deemed presumptively compatible within the zoning district in which it is authorized, unless specific adverse conditions at the proposed location are shown to overcome the presumption. Pre-set legislative standards are both specific and general.

Although Petition S-2726 seeks a new special exception to establish a private educational institution, Petition S-2453-A proposes only a modification to an existing child day care special exception. The appropriate scope of the hearing on a petition for modification of a special exception is spelled out in Zoning Ordinance § 59-G-1.3(c)(4). As mentioned in Part I of this report, because Petitioner's plans do not include expansion of the total floor area *by more than*

25%, or 7,500 square feet, the scope of the inquiry regarding that petition is limited by statute to “discussion of those aspects of the special exception use that are directly related to [the modification] proposals,” and does not include a review of the “underlying special exception.”

Nevertheless, the changes proposed by the modification petition do require a review to insure that the noticed changes will comply with the controlling statutory provisions and will not have unduly adverse effects on the neighborhood. Moreover, its combination with a new special exception (S-2726) necessitates a complete review of the standards governing that petition for a private educational institution.

A. Standard for Evaluation

The standard for evaluation prescribed in Zoning Ordinance § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a combined private educational institution and child day care use. Characteristics of the proposed combined use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational

characteristics of the proposed combined use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

In this case, the Technical Staff suggested the following inherent characteristics associated with the combined use (Exhibit 28, p. 8):

The inherent characteristics of both the child care center and the private educational institution include: (1) buildings and structures, as well as outdoor areas for the children to play; (2) early and long hours of operation; (3) traffic to and from the site by the staff and parents; (4) deliveries of supplies and trash pick-up; (5) drop-off and pick-up areas for the students who attend field trips during summer camp; (6) noise from the children playing in the play areas.

To this list of inherent characteristics, the Hearing Examiner would add lighting, signage and impervious surfaces for parking of vehicles.

Technical Staff indicated that it had identified only one non-inherent characteristic, “parent and teacher training at this site both after-hours and on weekends, which is beyond the standard operating procedure of most day care centers and private educational institutions.” Exhibit 28, p. 8. In Staff’s opinion, this non-inherent characteristic would not cause any unacceptable impacts. Staff noted that there will be adequate parking for the resident, parents, and employees; that no exterior modifications to the existing structure are proposed; and that ample landscaping of the proposed parking area along Darnestown Road will retain the residential character of the street. Thus, Technical Staff found “that the size, scale and scope of the proposed expansion are minimal and are not likely to result in any unacceptable noise, traffic disruption or environmental impacts.” Exhibit 28, p. 8.

The Hearing Examiner finds that there are two other non-inherent characteristics of the site, the proximity of its northwest play area to the adjacent residence (Mr. Lolatchy's home) and the inability of passenger vehicles to safely exit the site unless they turn right onto Darnestown Road. As discussed in Part II. E. of this report, the Hearing Examiner does not find that these non-inherent characteristics and the one identified by Staff require denial of the petition, but they do necessitate special conditions and a traffic management plan.

Zoning Ordinance §59-G-1.22(a) provides that:

The Board, the Hearing Examiner, or the District Council, as the case may be, may supplement the specific requirements of this Article with any other requirements necessary to protect nearby properties and the general neighborhood.

After carefully reviewing the entire record, the Hearing Examiner is convinced, as was the Technical Staff, that the requested modifications and new use, if properly conditioned, will have no significant adverse effects, inherent or non-inherent, on the surrounding area.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's documentary evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions:

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Conclusion: Private educational institutions and child day care facilities are permitted by special exception in the R-90 Zone pursuant to Zoning Ordinance §59-C-1.31(d).

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use and modifications would comply with the standards and requirements set forth for in Zoning Ordinance §§59-G-2.19 and 2.13.1, as detailed below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject site is located within the area covered by the 1990 Shady Grove Study Area Master Plan. The Master Plan discusses the subject site (as part of 23 acres of residential and employment uses fronting on Darnestown Road) in conjunction with the Public Service Training Academy (PSTA), now called the Montgomery County Public Training Service, immediately north of the site. Master Plan, pp. 67-68. As described in more detail in Part II. C. of this report, the Plan discusses the possibility of acquiring the Darnestown Road frontage lots (including the subject site) for public use, or alternatively, designating the area as suitable for 8/unit per acre use to encourage coordinated development.

Nevertheless, the Master Plan supports the existing R-90 Base Zone for the subject property (Master Plan p. 76, figure 6.2), while it also recommends making the

RT-8 Floating Zone an option (Master Plan p. 77, figure 6.3). Private educational institutions and child day care facilities are allowed by special exception in both the R-90 and the RT-8 zones, so it is fair to say that the proposed uses are consistent with the goals of the Master Plan.

Moreover, as pointed out by Technical Staff (Exhibit 28, p. 6 and Attachment 4), the Master Plan makes the following observations with respect to day care facilities:

- Recommends the provision of child day care facilities and housing for the elderly at appropriate locations in the Study Area (p. 6);
- Day care facilities, available in the residential neighborhoods as well as employment centers, attract young families with children (p 20);
- Encourage the provision of child day care facilities at appropriate locations in the Shady Grove Study Area (p. 120).

The Master Plan discusses child day care facilities and schools as among facilities which serve as “‘community magnets’ to help provide a sense of community.” Master Plan, pp. 111-120. The Plan notes (Master Plan, p. 120):

The number of working parents and the projected increase in the number of children of appropriate ages in the Shady Grove Study Area indicate a need for additional child day-care facilities and opportunities.

Based on this record, Technical Staff concluded that “both applications are consistent with the recommendations contained in the Master Plan for community facilities.” Exhibit 28, p. 9. The Hearing Examiner agrees.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: Technical Staff concluded that the special exception applications will be in harmony with the general character of the neighborhood because no new buildings will be constructed; the new pavilion will be located on the side of the building where there are no residential dwelling units; adequate space is being provided for the students, both indoors and out; the character of the activities is inherent to the day care and private educational uses; the proposed parking area will be adequately screened; and while the area is zoned predominately residential, the adjacent properties have non-residential uses, as well (*i.e.*, a dance studio home occupation; a Pepco facility and the Montgomery County Public Training Academy). Exhibit 28, p. 10. To these observations, the Hearing Examiner would add that traffic will remain within CLV standards for the area; that adequate parking will be provided for daily use; that additional parking will be arranged, as necessary, for special events; that a Statement of Operations (Exhibit 41(k)) and related conditions will limit the timing and intensity of operations; and that a TMP (Exhibit 53(a)) will require monitoring and enforcement of vehicle operations on site and on the neighbor's property. Therefore, the Hearing Examiner agrees with Technical Staff's conclusion that the special exceptions will be in harmony with the general character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in the previous answer and in Part II. E. of this report, the evidence supports the conclusion that, with the specified operational limitations and other conditions, the requested new use and modifications would not be detrimental

to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found that the proposed use and modifications will not cause any unacceptable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. Exhibit 28, p. 11. As noted in Part II. E. of this report, some noise and physical activity from children is an inherent characteristic of these special exceptions. The conditions recommended by the Hearing Examiner will insure that these adverse effects are sufficiently mitigated. The proposed lighting will not exceed 0.1 foot-candles along the property line, as shown in the Lighting and Photometric Plan (Exhibit 53(h)), and the proposed lighting will have shields with adjustable fixtures to minimize glare. This is in accordance with the lighting standards for residential zones set forth in Zoning Ordinance §59-G-1.23(h). There is no evidence that the proposed uses will create any unacceptable vibrations, fumes, odors or dust. Based on this record, the Hearing Examiner finds that the proposed use and modifications will not cause any unacceptable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: There are a number of other special exceptions in the general neighborhood, as listed on page 12 of this report. However, as noted by the Technical Staff, the neighborhood is identified as a “research and development” area within the Shady Grove Study Area Master Plan, and the proposed use would be compatible with surrounding uses. Exhibit 28, p. 11. Moreover, by definition, “*Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*” As previously stated, the proposed uses are consistent with the recommendations of a master plan.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence summarized above supports the conclusion that the proposed use and modifications would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. In fact, the addition of needed child care capacity is a boon to the general welfare of the area.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*
 - (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
 - (B) *If the special exception does not require approval of a preliminary plan of subdivision, by the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and*

services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.

Conclusion: As determined by Technical Staff (Exhibit 28, p. 12), the special exception and modifications sought in this case would require approval of a preliminary plan of subdivision. Therefore, the public facilities review will be done by the Planning Board at subdivision, and approval of the Preliminary Plan will be a condition of this special exception. Nevertheless, Petitioner's traffic engineer, Carl Starkey, did do a traffic analysis (Exhibit 21(f)), and found that the Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR) would be met, as discussed in Part II. D. of this report. Technical Staff agreed, and the matter will be reviewed at Subdivision. The Hearing Examiner finds that Petitioner has made a sufficient showing at this stage that public facilities will be adequate.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: "Transportation Planning staff has reviewed the existing and proposed internal traffic/pedestrian circulation system and finds them safe and adequate." Exhibit 28, p. 19. Based on the evidence in this record, as discussed in Part II. D. of this report, the Hearing Examiner concludes that the proposed use and modifications, as conditioned, would not reduce the safety of pedestrian or vehicular traffic.

C. Specific Standards: Educational Institutions, Private

The specific standards for a private educational institution are found in Code § 59-G-2.19. The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient

evidence that the proposed use would be consistent with these specific standards, as outlined below.

Sec. 59-G-2.19. Educational institutions, private.

(a) *Generally. A lot, tract or parcel of land may be allowed to be used for a private educational institution if the board finds that:*

(1) *the private educational institutional use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element which is incompatible with the environment and character of the surrounding neighborhood;*

Conclusion: For the reasons set forth in the General Standards section above and in Part II. E. of this report, as long as appropriate conditions are imposed, the uses will not constitute a nuisance because of traffic, number of students, noise, type of physical activity or any other element, and they will be compatible with the environment and character of the area.

(2) *except for buildings and additions completed, or for which a building permit has been obtained before (date of adoption [April 2, 2002]), the private educational institution must be in a building architecturally compatible with other buildings in the surrounding neighborhood, and, if the private educational institution will be located on a lot, tract, or parcel of land of 2 acres or less, in either an undeveloped area or an area substantially developed with single-family homes, the exterior architecture of the building must be similar to a single-family home design, and at least comparable to any existing homes in the immediate neighborhood;*

Conclusion: Technical Staff found that the existing school building, the exterior of which will not be modified, is compatible (Exhibit 28, p. 18):

There are no proposed alterations to the exterior of the building, as indicated by the applicant. Modifications, if any, to the building will be interior. The existing school building is [a] well designed single-story building. Its exterior is vinyl siding with stone base and has a red metal roof. The existing structure is lower in height than the single-family home on-site as well as the adjacent home to the west. . . . Staff finds that the exterior architecture of the building is similar to a single-family

home design and is comparable to the existing homes in the immediate neighborhood.

It also should be noted that there will be no exterior modifications to the single-family/administrative building on Lot 1 and that the proposed pavilion will have a roof color that matches the existing building. See Site Plan, Exhibit 53(e).

Petitioner's site designer, Michael Norton, also testified that the proposed pavilion would be compatible in its siting, landscaping, scale, bulk, height, materials and textures and that it would have a residential appearance. Tr. 146, 149-150. Based on this record, the Hearing Examiner finds that the requirements of this section are met.

(3) *the private educational institution will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community; and*

Conclusion: For the reasons set forth in the General Standards section above, the Hearing Examiner finds that the use will not adversely affect or change the present character or future development of the surrounding neighborhood.

(4) *the private educational institution must conform with the following standards in addition to the general development standards as specified in Section G-1.23:*

- a. *Density—The allowable number of pupils per acre permitted to occupy the premises at any one time must be specified by the Board considering the following factors:*
 1. *Traffic patterns, including:*
 - a) *Impact of increased traffic on residential streets;*
 - b) *Proximity to arterial roads and major highways;*
 - c) *Provision of measures for Transportation Demand Management as defined in Section 42A-21 of the Montgomery County Code;*
 - d) *Adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter queues of waiting vehicles from spilling over onto adjacent streets; and*

2. *Noise or type of physical activity;*
3. *Character, percentage, and density of existing development and zoning in the community;*
4. *Topography of the land to be used for the special exception; and*
5. *Density greater than 87 pupils per acre may be permitted only if the Board finds that (i) the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements; (ii) the additional density will not adversely affect adjacent properties; (iii) additional traffic generated by the additional density will not adversely affect the surrounding streets.*

Conclusion: Petitioner would enroll up to 40 first and second grade students under the new Private Educational Institution special exception, and Petitioner's day care enrollment cap would increase from 88 to 118, but no more than 130 children, combined, would be on site at any one time. Given the size of the site (1.503 acres), the pupil density would be 86.67 students per acre ($130 / 1.503$). As such, the applicant meets the pupil density limit of this code section. Moreover, the traffic situation and the other topics in this section have been discussed at length in Part II. of this report. The record demonstrates that Petitioner would meet the standards set forth in this section with a maximum combined student and day care enrollment of 130 on site at any given time. A condition has been recommended establishing this limit.

- b. *Buffer—All outdoor sports and recreation facilities must be located, landscaped or otherwise buffered so that the activities associated with the facilities will not constitute an intrusion into adjacent residential properties. The facility must be designed and sited to protect adjacent properties from noise, spill light, stray balls and other objectionable impacts by providing appropriate screening measures, such as sufficient setbacks, evergreen landscaping, solid fences and walls.*

Conclusion: There are no outdoor sports facilities such as soccer fields proposed in this case.

There are two existing outdoor play areas, and a pavilion will be added. One play area (dubbed the northeast play area by the Hearing Examiner) and the pavilion are located on the eastern side of the existing building, which will provide a barrier to potential noise caused by the gathering of children. The front of the pavilion area will be fenced and landscaped with both trees and shrubbery according to the provided landscape plan. There are shrubbery, trees and a fence between the other play area (dubbed the northwest play area) and the adjacent property. Additional limits on its use are recommended by conditions to reduce noise and physical activity. Based on this record, the Hearing Examiner finds that the proposed use is compliant with this section.

- (b) *If a Private Educational Institution operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, the Board must find, in addition to the other required findings for the grant of a Private Education Institution special exception, that the activities in combination with other activities of the institution, will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impacts on the community, the Board must take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Board.*

The Board may limit the number of participants and frequency of events authorized in this section.

Conclusion: Petitioner is not planning to host any of the above-referenced activities. Academy is, however, open year round as a child day care facility, and the nature of its operations under that special exception category will not change as a result of the

addition of the first and second grade school. Exhibit 21(a). Nevertheless, the evidence discussed in Part II of this report supports the conclusion that the proposed special exception modification and the new special exception at this location, as conditioned, will not create the listed adverse effects.

(c) *Programs Existing before April 22, 2002.*

(1) *Where previously approved by the Board, a private educational institution may continue the operation of (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, whether such programs include students or non-students of the school, if the number of participants and frequency of events for programs authorized in 59-G-2.19(b) are established in the Board's approval.*

(2) *Where not previously approved by the Board, such programs may continue until April 22, 2004. Before April 22, 2004, the underlying special exception must be modified to operate such programs, whether such programs include students or non-students of the school. The Board may establish a limit on the number of participants and frequency of events for authorized programs.*

Conclusion: Inapplicable as to the private educational institution special exception, which would be new. The child care special exception modifications are discussed in the next section of this report.

(d) *Site plan.*

(1) *In addition to submitting such other information as may be required, an applicant shall submit with his application a site plan of proposed development. Such plan shall show the size and shape of the subject property, the location thereon of all buildings and structures, the area devoted to parking and recreation facilities, all access roads and drives, the topography and existing major vegetation features, the proposed grading, landscaping and screening plans and such other features necessary for the evaluation of the plan.*

(2) *No special exception, building permit or certificate of occupancy shall be granted or issued except in accordance with a site plan of development approved by the board. In reviewing a proposed site plan of development the board may condition its approval thereof*

on such amendments to the plan as shall be determined necessary by the board to assure a compatible development which will have no adverse effect on the surrounding community, and which will meet all requirements of this chapter. Any departure from a site plan of development as finally approved by the board shall be cause for revocation of the special exception, building permit or certificate of occupancy, in the manner provided by law.

Conclusion: Appropriate plans (NRI/FSD, Site Plan, Landscaping & Signage Plan, Lighting Plan, PFCP, Stormwater Management Concept Plan, TMP and Statement of Operations) have been submitted by Petitioner and are binding on it.

- (e) *Exemptions. The requirements of Section G-2.19 do not apply to the use of any lot, lots or tract of land for any private educational institution, or parochial school, which is located in a building or on premises owned or leased by any church or religious organization, the government of the United States, the State of Maryland or any agency thereof, Montgomery County or any incorporated village or town within Montgomery County. This exemption does not apply to any private educational institution which received approval by the Board of Appeals to operate a private educational institution special exception in a building or on a lot, lots or tract of land that was not owned or leased by any church or religious organization at the time the Board of Appeal's decision was issued.*

Conclusion: This subsection is not applicable.

- (f) *Nonconforming uses. Nothing in this chapter shall prevent any existing private educational institution which obtained a special exception prior to the effective date of this chapter, from continuing its use to the full extent authorized under the resolution granting the respective special exception, subject, however, to division 59-G-4 of this chapter.*

Conclusion: This subsection is not applicable.

- (g) *Public Buildings.*

* * *

Conclusion: This subsection is not applicable.

- (h) *Applications filed before May 6, 2002. Any application filed before May 6, 2002 for a private educational institution special exception or modification of a private educational institutional special exception*

must comply with the requirements of Article 59-G and Article 59-E in effect at the time the special exception was filed.

Conclusion: This subsection is not applicable.

D. Specific Standards: Child Day Care Facility

The specific standards for a child day care facility are found in Code § 59-G-2.13.1. The Technical Staff report and the evidence of record in this case provide sufficient evidence that the proposed modifications to the child day care facility use would be consistent with these specific standards, as outlined below.

Sec. 59-G-2.13.1. Child day care facility.

(a) *The Hearing Examiner may approve a child day care facility for a maximum of 30 children if:*

(1) *a plan is submitted showing the location of all buildings and structures, parking spaces, driveways, loading and unloading areas, play areas and other uses on the site;*

Conclusion: A site plan (Exhibit 53(e)) has been submitted showing buildings and other facilities, as required.

(2) *parking is provided in accordance with the Parking Regulations of Article 59-E.*

The number of parking spaces may be reduced by the Hearing Examiner if the applicant demonstrates that the full number of spaces required in Section 59-E-3.7 is not necessary because:

(A) *existing parking spaces are available on adjacent property or on the street abutting the site that will satisfy the number of spaces required; or*

(B) *a reduced number of spaces would be sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating safety problems;*

Conclusion: Technical Staff determined that, to comply with Zoning Ordinance Article 59-E, 55 parking spaces were required, as discussed in Part II. D. of this report. Petitioner's site plan provides for the required 55 spaces.

(3) *an adequate area for the discharge and pick up of children is provided;*

Conclusion: Based on the standard established in Zoning Ordinance §59-E-3.7 for Child Care Facilities (“the average drop off and pick up space required is one space for every six children”), Technical Staff calculated that 22 spaces (130 / 6) would be required for drop off and pick up. The plans submitted for this application provide for 22 of the 55 spaces to be for pick up and drop off, two of which are dedicated “5-minute parking” spaces. Staff found that adequate area for the discharge and pick-up of children will be provided (Exhibit 28, p. 16), and the Hearing Examiner agrees.

(4) *the petitioner submits an affidavit that the petitioner will:*

- (A) *comply with all applicable State and County requirements;*
- (B) *correct any deficiencies found in any government inspection; and*
- (C) *be bound by the affidavit as a condition of approval for this special exception; and*

Conclusion: Petitioner submitted the required affidavit as Exhibit 13 to the original child care facility petition in S-2453. A copy is also appended to the Technical Staff report in this case as Attachment 13.

(5) *the use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity. The hearing examiner may require landscaping and screening and the submission of a plan showing the location, height, caliper, species, and other characteristics, in order to provide a physical and aesthetic barrier to protect surrounding properties from any adverse impacts resulting from the use.*

Conclusion: As stated above in the discussion regarding the general standards and the specific standards for a private educational institution, the uses, as conditioned, will be compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity.

(b) *A child day care facility for 31 or more children may be approved by the Board of Appeals subject to the regulations in subsection (a), and the following additional requirements:*

(1) *a landscaping plan must be submitted showing the location, height or caliper, and species of all plant materials; and*

Conclusion: An appropriate Landscaping Plan was submitted as Exhibit 53(f).

(2) *in the one-family residential zones, facilities providing care for more than 30 children must be located on a lot containing at least 500 square feet per child. The Board may reduce the area requirement to less than 500 square feet, but not less than 250 square feet, per child if it finds that:*

- (A) *the facility will predominantly serve children of an age range that require limited outdoor activity space;*
- (B) *the additional density will not adversely affect adjacent properties;*
- (C) *additional traffic generated by the additional density will not adversely affect the surrounding streets; and*
- (D) *adequate provisions for drop-off and pick-up of students will be provided.*

The Board may limit the number of students outside at any one time.

Conclusion: Petitioner proposes a combined maximum student enrollment of 130 on campus at any one time. Since the site contains 65,496 square feet, it meets the required minimum of 500 square feet per child ($65,496 / 130 = 503.82$ square feet per child).

(c) *The requirements of Section 59-G-2.13.1 do not apply to a child day care facility operated by a nonprofit organization and located in:*

(1) *a structure owned or leased by a religious organization and used for worship;*

Conclusion: This subsection is not applicable.

(2) *a structure located on premises owned or leased by a religious organization that is adjacent to premises regularly used as a place of worship;*

Conclusion: This subsection is not applicable.

(3) *a structure used for private parochial educational purposes which is exempted from the special exception standards under Section 59-G-2.19(c); or*

Conclusion: This subsection is not applicable.

(4) *a publicly owned building.*

Conclusion: This subsection is not applicable.

E. Other Applicable Standards

Section 59-G-1.23. General development standards.

(a) *Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: The following chart from the Technical Staff Report (Exhibit 28, p. 13), demonstrates compliance with all applicable development standards:

Development Standards	Requirement	Provided	
Minimum Tract Area (§59-C-1.321(a))	Not applicable	62,117 sq. ft.	
Lot Area (§59-C-1.322(a))	9,000 sq. ft.	62,117 sq. ft.	
Lot Width (§59-C-1.322(b)): @ Front of Bldg Line @ Street	75-feet 25-feet	±214 ft. ±214.6 ft.	
Yard Requirements (main building): From Street (§59-C-1.323(a)) From Adjoining Lot Side Yards (§59-G-2.37(b)(3)) Rear Yard (§59-C-1.323(b))	30-feet 8-feet (one side) 25-feet (both sides) 25-feet	S-F house 24.62 ft. 20.49 ft. 185.49 ft. 271.04 ft.	School 146.63 ft. 8.94 ft. 27.25 ft. 60.03 ft.
Yard Requirements (accessory building) (§59-C-1.326): From Street From Rear Lot Line From Side Lot Line	60-feet 5-feet 5-feet	Shed 195.81 ft. 34.44 ft. 58.41 ft.	Pavilion 201.76 ft. 24.5 ft. 25.74 ft.
Building Height (maximum) (§59-C-1.237)	35 ft.	S-F house ± 27 ft.	School ±18 ft/
Coverage (maximum net lot area) (§59-C-1.328)	30%	20 %	
Parking Facility Setbacks (§ 59-E-2.83) Front Yard Side Yard Rear Yard	30-feet 16-feet [†] 25-feet	30 ft. 8 ft./19 ft (left/right) 25 ft.	
Density Requirements (total students per acre and sq. ft.) §59-G-2.13.1(a) §59-G-2.19(a)(4)5	1 student per 500 sq. ft.		

* An accessory building or structure must be located in a rear yard and must not occupy more than 20% of the rear yard.

† The applicant is exempt from §59-E-2.83(e), as this site was approved prior to May 6, 2002, and the proposed parking area is 50% less than the total parking area; therefore, the applicant meets the applicable setbacks for the side yard.

(b) Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.

Conclusion: As previously discussed, Petitioner will be in compliance with all applicable parking standards.

*(c) Minimum frontage * * **

Conclusion: Not applicable, since none of the listed uses are involved and no waiver is being sought.

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

Conclusion: The Planning Board unanimously approved Petitioner's Preliminary Forest Conservation Plan (PFCP). Exhibits 40, 41(d) and (e). Since this case must go through subdivision, the Planning Board will review the final forest conservation plan at that time. The following condition has been recommended in Part V of this report:

The proposed development must comply with the conditions of the Preliminary Forest Conservation Plan, Exhibits 41(d) and (e), until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.

(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

Conclusion: Water Quality Plans are used in special protection areas (SPAs), as specified in Zoning Ordinance §59-A-2.1. Since the subject site is not in an SPA, this provision is inapplicable to this case.

(f) *Signs. The display of a sign must comply with Article 59-F.*

Conclusion: As discussed in Part II.D. of this report, Petitioner seeks to erect signs for which sign variances and permits will be required. A condition has been recommended in Part V of this report to assure compliance with Article 59-F.

(g) *Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: The exteriors of the existing school buildings will not be modified, although one single-family non-school building will be removed from Parcel 60 and a shed will be relocated. The only new structure will be the pavilion, which will have a residential appearance and will be appropriately landscaped and screened. Technical Staff and the Hearing Examiner concluded that the residential character of the subject site will be maintained, given the architectural design of the planned pavilion, and its setting, setbacks and landscaping. It will thus be compatible with the neighborhood.

(h) *Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

(1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*

(2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: As discussed elsewhere in this report, the lighting will be residential in character, and will not cause glare on adjoining properties, nor exceed the 0.1 foot-candle standard at the side and rear property lines.

Section 59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: As discussed above, the exteriors of the existing school buildings will not be modified, although one single-family building will be removed from Parcel 60 and a shed will be relocated. The only new structure will be the pavilion, which will have a residential appearance and will be appropriately landscaped and screened. It will also have suitable pedestrian circulation.

Based on the testimony and evidence of record, I conclude that, with the recommended conditions, the plans proposed by Petitioner meet the specific and general requirements for the proposed uses, and that the Petitions should be granted, with the conditions recommended in the final section of this report.

V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition S-2453-A, which seeks to modify an existing special exception for a child day care facility and Petition S-2726, which seeks to obtain a new private educational institution special exception, all on property located at 10107 Darnestown Road, Rockville, Maryland, be **granted** with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.

2. All terms and conditions of the approved special exception in S-2453 shall remain in full force and effect, except as modified by the Board as a result of the subject modification petition, S-2453-A..
3. Petitioner must apply for Preliminary Plan review and recordation of a plat, per Chapter 50 of the Montgomery County Code. Since the proposed use will require subdivision, in accordance with Zoning Ordinance §59-G-1.21(a)(9), approval of this special exception is conditioned upon approval of a preliminary plan of subdivision by the Planning Board. If changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must request modification of these special exceptions from the Board of Appeals.
4. Petitioner must comply with the terms of its Site Plan (Exhibit 53(e)), its Landscape and Signage Plan (Exhibit 53(f)); its Lighting Plans (Exhibits 53(g) and (h)); and its Canopy Plan (Exhibit 53(i)).
5. Petitioner must comply with the conditions of the Preliminary Forest Conservation Plan, Exhibits 41(d) and (e), until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.
6. Petitioner must comply with the stormwater management plan ultimately approved by DPS.
7. Petitioner must comply with its revised Transportation Management Plan (Exhibit 53(a)). Under the TMP, Petitioner may permit trucks and busses to make a left-hand turn out of their driveways, but passenger vehicles may exit with a right turn only. These restrictions must be strictly monitored and enforced in accordance with the

- TMP. If changes in the TMP are made at subdivision, Petitioner must request a modification of these special exceptions from the Board of Appeals to so reflect.
8. The number of employees for the combined uses may not exceed 31 on site at any given time.
 9. Petitioner's day care enrollment cap is increased from 88 to 118, and Petitioner may enroll up to 40 first and second grade students under its new Private Educational Institution special exception, but no more than 130 children, combined, may be on site at any one time.
 10. Regular weekday hours are restricted to between 6:30 A.M. and 6:45 P.M., Monday through Friday, 12 months a year, in the manner specified in the Statement of Operations (Exhibit 41(k)). Petitioner may conduct training of parents and employees and miscellaneous activities specified in the Statement of Operations after hours and on weekends, but must comply with the conditions specified therein. The permitted hours of such events shall be 9:00 a.m. to 2:30 p.m. for Saturday events and no later than 9:00 p.m. on weekdays, with the maximum number of events and the maximum attendance specified in the Statement of Operations.
 11. Petitioner must comply with all Maryland State and Montgomery County licensure requirements and standards for the operation of a child day care facility and a private educational institution.
 12. In accordance with Code § 59-G-2.13.1(a)(4), the Petitioner is bound by the Affidavit of Compliance submitted in connection with this case, Exhibit 28, Attachment 13, in which Petitioner certified that it will comply with and satisfy all applicable State and County requirements, correct any deficiencies found in any government inspection, and be bound by the affidavit as a condition of approval for the special exception.

13. In no event may a child be dropped off before a staff member is present to supervise that child; nor may a child be left alone if a parent is late in making a pick-up.
Children must be escorted to and from the facility entrance by an adult.
14. All children must be under the direct supervision of a staff member at all times, both inside and outside the building.
15. Petitioner must ensure that trash and recycling pickups and lawn maintenance do not take place before 9 a.m. Monday through Saturday, nor before 10 a.m. on Sundays
16. Outdoor play may not begin before 9:00 a.m. on the northwest play area adjacent to the Lolatchy property. No amplified sound of any kind may be used in the northwest play area adjacent to the Lolatchy property, and no more than 20 children may use that play area at any one time.
17. The Petitioner shall not use a public address system of any kind outside the building, nor shall any amplified music be played outside the building, with the following exception: Petitioner may use a tape or compact disc player to play music, only in the northeast play area on Lot 1 and/or under the Pavilion on the eastern side of the property (currently called Parcel 60), under the following conditions – Such music may be played only after 9:30 a.m. on weekdays; must not produce noise exceeding 50 dBA at the western property line; and is limited to one hour per day.
18. The Petitioner shall maintain the grounds in a clean condition, free from debris, on a daily basis.
19. Petitioner may display one freestanding sign and one building sign as depicted on the Landscape and Signage Plan (Exhibit 53(f)), if they are approved by the Department of Permitting Services and a permit is obtained. A copy of the permit should be filed with the Board of Appeals before the sign is posted. If a sign variance is required, Petitioner

must obtain such a variance and file a copy with the Board of Appeals before the sign is posted.

20. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: October 3, 2008

Respectfully submitted,

Martin L. Grossman
Hearing Examiner